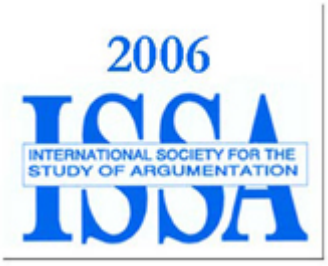
ISSA Proceedings 2006 – Resort To Persuasive Authority: The Use And Abuse Of Legal Argument In Political Discourse



1. *Introduction: Debating the Invasion of Iraq in the United Kingdom Parliament*

Politics engages the art of persuasion, for which laws may be called in aid, but the desire to persuade must not overreach sound legal opinion. In particular, politicians who use legal arguments for more than rhetorical dressing must be convincing by legal standards. A spectacular example of the resort to legal advice in order to sustain a political decision was the UK government's justification, made in the British Parliament, for its invasion of Iraq in 2003. In our paper we will use this example to investigate the role of sound legal argument for the democratic process alongside the dangers of flawed legal argumentation in support of the politics of persuasion.

The UK government set a novel precedent in engaging in a public debate in the House of Commons whether the United Kingdom should use armed force against Iraq. Never before had a legal opinion of the Attorney-General been made available to the public; typically the counsel of the government's legal advisor is confidential. Never before had the UK government's intention to make war been subjected to debate by the public's elected representatives in Parliament; in the past the government has always decided matters of peace and war. Here then was a transparent use of law in political discourse.

The question of the legality of the proposed invasion was crucial. In taking the advice of Lord Goldsmith, the Attorney-General, Prime Minister Blair appears to have sought to lead the government and the country to act within the law, but whether that actually was the case became part of the parliamentary debate.

2. *The Government's Motion*

The British government's position was publicly presented in a motion before the House of Commons on 18 March 2003, very shortly before the invasion of Iraq began. The motion first took note of four essentially factual premises regarding

Iraq's obligations under UN Security Council resolutions and its continuing breach of them. Its central portion stated that the House:
notes the opinion of the Attorney General that, Iraq having failed to comply and Iraq being at the time of Resolution 1441 and continuing to be in material breach, the authority to use force under Resolution 678 has revived and so continues today; believes that the United Kingdom must uphold the authority of the United Nations as set out in Resolution 1441 and many Resolutions preceding it, therefore supports the decision of Her Majesty's Government that the United Kingdom should use all means necessary to ensure the disarmament of Iraq's weapons of mass destruction. (House of Commons Hansard, 18 March 2003, col.760)

The remaining clauses of the motion concerned support for British troops on duty in the Middle East, post invasion plans for the rebuilding of Iraq politically and economically and finally commendation for the "Quartet's roadmap", a proposed blue print for bringing peace to Israel and Palestine and to the wider Middle East. Assuming for present purposes that the factual assertions about Iraq's continuing breach of its legal obligations were correct, the Attorney-General's reading of the relevant UN resolutions provided the legal basis for the UK's determination to use force against Iraq. This deconstruction of the motion before the House of Commons shows that the legal opinion of the Attorney-General was a central element in the UK government's policy towards Iraq. The motion expressly invited the House to support the government's decision to invade Iraq in the belief this was an appropriate exercise of legal power.

3. *The Attorney-General's Legal Opinion*
Such a significant reference to UN authority demands a review of the relevant Security Council resolutions and the Attorney-General's interpretation of them. His legal opinion, in summarized form, was placed before the House of Commons by the Solicitor General on March 17, 2003, only one day before the debate on the government's motion. It read:
Authority to use force against Iraq exists from the combined effect of resolutions 678, 687 and 1441. All of these resolutions were adopted under Chapter VII of the UN Charter which allows the use of force for the express purpose of restoring international peace and security:
(1). In resolution 678 the Security Council authorised force against Iraq, to eject it from Kuwait and to restore peace and security in the area.

(2). In resolution 687, which set out the ceasefire conditions after Operation Desert Storm, the Security Council imposed continuing obligations on Iraq to eliminate its weapons of mass destruction in order to restore international peace and security in the area. Resolution 687 suspended but did not terminate the authority to use force under resolution 678.
(3). A material breach of resolution 687 revives the authority to use force under resolution 678.
(4). In resolution 1441 the Security Council determined that Iraq has been and remains in material breach of resolution 687, because it has not fully complied with its obligations to disarm under that resolution.
(5). The Security Council in resolution 1441 gave Iraq "a final opportunity to comply with its disarmament obligations" and warned Iraq of the "serious consequences" if it did not.
(6). The Security Council also decided in resolution 1441 that, if Iraq failed at any time to comply with and co-operate fully in the implementation of resolution 1441, that would constitute a further material breach.
(7). It is plain that Iraq has failed so to comply and therefore Iraq was at the time of resolution 1441 and continues to be in material breach.
(8). Thus, the authority to use force under resolution 678 has revived and so continues today.
(9). Resolution 1441 would in terms have provided that a further decision of the Security Council to sanction force was required if that had been intended. Thus, all that resolution 1441 requires is reporting to and discussion by the Security Council of Iraq's failures, but not an express further decision to authorise force. (House of Commons Hansard, 17 March 2003, col. 515W)

At first glance, the clarity of the Attorney-General's legal opinion is attractive but a closer analysis exposes the weaknesses in his reasoning. He correctly stated that resolutions adopted under Chapter VII of the UN Charter may allow states to use force for the purpose of restoring peace and security, but his view that resolutions 678, 687 and 1441 did so is highly questionable. While points 1 and 2 accurately characterize the contents of resolutions 678 and 687, point 3 consists of the astonishing and unsupported assertion that "[a] material breach of resolution 687 revives the authority to use force under resolution 678." In making this claim Lord Goldsmith spoke in a way that contradicts what these two resolutions can reasonably be taken to mean and to mandate.
It is important to remember that resolution 687 was a decision of the Security

Council. Under the UN Charter, this body had the power both to authorize the use of force against Iraq, which it exercised in resolution 678, and to declare an end of hostilities on terms, which it did in resolution 687. Moreover, the Security Council in the closing paragraph 34 of resolution 687 decided "to remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution ...." How, then, can the Attorney-General possibly be correct to assert that a single state, such as the United Kingdom, may contradict the ceasefire resolution of the multilateral body to which it is a party, or read its decision as authorising independent interpretations of future action? Even assuming the correctness of the observations in points 4-7 about resolution 1441 and Iraq's continuing failure to comply with its disarmament obligations, Lord Goldsmith's key premise to the effect that "a material breach of 687 revives the authority to use force under resolution 678" should be rejected, and hence his main conclusion that "the authority to use force under resolution 678 has revived and so continues today" cannot be said to follow.

Furthermore, the principal objective of resolution 678 was to authorize states to use force to remove Iraq from Kuwait. Since this goal had been achieved, as the ceasefire resolution 687 acknowledged, any supposed revival of authority regarding Kuwait under resolution 678 would have no point and could not justify British intervention in Iraq. While resolution 687 imposed stringent sanctions and duties on Iraq, it did not authorise other states to take action towards Iraq. To his credit, the Attorney-General did not claim that it did.

In respect of resolution 1441, the Attorney-General indicated that it did not require "an express further decision to authorise force." Having already asserted that the right to use force had been revived (point 8), this further claim (point 9) was a necessary appendix to his legal opinion in order to counter the contrary implications of resolution 1441. Although resolution 1441 threatened Iraq with "serious consequences" (understood in Security Council phraseology to mean the exercise of armed force), it did not expressly state that a further resolution in addition to 1441 was necessary. The omission of such a provision in resolution 1441 suggested enough ambiguity for the Attorney-General to exploit this lack of precision and insist that no further decision of the Security Council to sanction force was necessary.

Such a manoeuvre was frankly disingenuous. Silence or absence of expression on so significant a point in resolution 1441 does not automatically imply consent. On

the contrary, since the military invasion of one state by another is prohibited by the UN Charter as an act of aggression in violation of international law except when collective measures are authorized under Chapter VII, it is much more reasonable to suppose that the Security Council's silence implied that it had yet to decide and declare how and when its threat of serious consequences for Iraq was to be carried out. Indeed, the Security Council expressly declared in resolution 1441 that it would "convene immediately upon receipt of a report [from the UN and IAEA inspectors] in order to consider the situation" (para.12) and that it remained seized with the Iraqi matter (para.14). In so deciding, the Security Council indicated that it had not made its final decision regarding Iraq. This interpretation is further supported by the conduct of the Security Council members. Their subsequent acrimonious debate about a further resolution, which the UK government actively supported, added to the incredulity of the view that, by consensus, none was needed.

The flawed reasoning on the part of the Attorney-General undermines the veracity of his legal opinion. Since Lord Goldsmith's advice became a key element in the UK government's motion before the House of Commons, it will be informative to consider how the legal argument advanced by him, as well as the adequacy of his legal opinion, affected the ensuing political debate.

4. *The Prime Minister's Speech*

The discussion of the government's motion was opened by Prime Minister Blair and brought to a close with the remarks of Jack Straw, the Secretary of State for Foreign Affairs. In between, 58 members of the House spoke to the motion. In order to ascertain how legal and political argumentation interfaced in this debate, critical attention will first be given to the Prime Minister's speech in favour of the motion, discussing, in particular, his references to and use of legal authority. As for the other speakers, who exhibited a broad range of stances and considerably different levels of acuity and insight, a representative sample of their contributions will be reviewed. This analysis will permit development of a concluding set of critical reflections about the use and abuse of legal argument in political discourse.

To ensure passage of the motion, Tony Blair needed to persuade the House that an immediate intervention in Iraq was justified. In the case that he made for the motion, both in his speech and in answers to members' interjections, he reasoned thus:

Premise 1: Saddam Hussein has consistently and persistently refused to meet the UN demands to disarm Iraq of weapons of mass destruction as required by 17 resolutions over 12 years. (House of Commons Hansard, 18 March, 2003, cols.761-762)
Premise 2 "Resolution 1441 is very clear: it lays down a final opportunity for Saddam to disarm … it says that this time compliance must be full, unconditional and immediate." (col.762)
Premise 3: After resolution 1441, the inspectors reported some cooperation but also a great many unanswered queries. (col. 762)
Premise 4: The UN Security Council struggled towards a further resolution potentially to contain 6 specific tests for Saddam Hussein to demonstrate full cooperation until France announced it would veto any such resolution. (cols.763-764)
Premise 5: "Any fair observer does not really dispute that Iraq is in breach of resolution 1441 or that it implies action in such circumstances." (col.767)
Premise 6: "We have to act within the terms set out in resolution 1441- that is our legal basis." (col.772)
Conclusion: The United Kingdom should use all necessary means to ensure the disarmament of Iraq's weapons of mass destruction. (motion)

Blair's argument began with four factual claims his target audience were unlikely to dispute. He supported Premise 1 with a chronological narrative about Saddam Hussein's repeated failures to fulfill his disarmament obligations. Premise 2 was a good enough paraphrase of the demands made by resolution 1441 on Saddam Hussein. Blair backed up Premises 3 and 4 with a description of the abortive diplomatic efforts to secure a further UN resolution licensing armed intervention. But his insistence that resolution 1441 implies action (Premise 5) and his assertion that the United Kingdom has to act (Premise 6) are open to serious doubt.
Even assuming that Iraq was in breach of resolution 1441, as asserted in Premise 5, it is not obvious that the resolution implied the immediate intervention Blair envisaged. Blair never explained how the implication of action arose or the scope and form such action might take. Indeed, whether and under what conditions any kind of action against Saddam Hussein should be taken pending ongoing weapons' inspections was the heart of the unresolved Security Council debate. Yet Blair's readiness to draw an implication of action can be read in the motion he was proposing, which incorporated the central point of the Attorney-General's

legal advice, namely that the authority to use armed force was revived by Iraq's breaches of resolution 1441. Even if Blair believed this flawed advice, he conveniently passed over the crucial distinction that legal authority to act is a discretionary power and does not necessarily imply one must act. Blair's choice of armed intervention in Iraq was widely known and, reasonably enough, he sought to clothe it in legal authority, but he crossed the line between legal reasoning and political persuasion if he implied that action under resolution 1441 was his duty.
Nor did Blair advance his argument, in premise 6, by asserting that "we have to act within the terms set out in resolution 1441- that is our legal basis." (col.772) This commitment was a choice of action which could take the UK government only as far as resolution 1441 went. No one doubted Blair's belief expressed in the motion that "the United Kingdom must uphold the authority of the United Nations as set out in resolution 1441" nor that resolution 1441 was the correct legal basis, but many questioned what Blair and his Attorney-General interpreted its contents to mean. Lord Goldsmith's opinion regarding resolution 1441, on which Tony Blair relied, was, with good reason, challenged by some members of the House in the subsequent debate.

As a result, Blair's conclusion that the United Kingdom should use all necessary means to disarm Iraq is not sustainable. He urged this policy but, beyond the emotional appeal that his speech engendered, he needed at least one substantive, well defended premise articulating the *bone fide* existence of legal authority that would secure for the government the legal right to intervene. Neither premise 5 nor premise 6 provided that solid underpinning, – unless the legal opinion of the Attorney- General was accepted without scrutiny. But if this were the case, the UK government laid itself open to the charge of using expert legal opinion, not as a source of trustworthy authority (as it is customarily regarded), but as just another weapon of political persuasion. Worse still, if the debased use of legal authority was known to Tony Blair but not to others, he was guilty of perverting the course of open political discourse.

5. *The Parliamentary Debate*
How then, did the legal elements of the motion figure in the ensuing debate? Of the 59 who spoke, 39 made some reference to the legality of a proposed intervention in Iraq or the UN resolutions pertinent to the motion. They can be grouped as:
(1) members of the House who thought the law was irrelevant;

(2) members who approved or accepted the government's reading of it; and
(3) those who were critical of the Attorney-General's interpretation of the Security Council resolutions. Representative opinions from each group will be discussed in turn.

Speakers who expressed the view that legal authority was irrelevant were largely derisory in tone. John Denham observed that "[t]he question for me has never been one of narrow legality. … lawyers are the last thing one needs when things are difficult." (col.798) Tony Banks remarked how legal opinion for one's personal point of view can always be bought from some lawyer. (col.880) David Heath said he did "not want to get hung up on international law, which is often a chimera that can take any shape that the strongest country chooses to adopt for it." (col.888) Regrettably, this group of speakers overlooked much of Prime Minister Blair's argument and the core of the government's motion that they were debating. Armed intervention in a foreign country for humanitarian purposes is still a violation of international law in the absence of Security Council authority under the UN Charter chapter VII. So it was impossible to set aside the law in this debate.
The larger point exemplified here is the relation of the law to the whole political process. The legal system provides the superstructure of institutions and procedures as well as substantive rules within which politics is played out, while the political process is able to create or change the law. This symbiotic relationship is not severable. One would hope that politicians would have a particularly good appreciation that their political choices of action are subject to the laws that also accord them the authority to make such executive decisions.
A second group of speakers adverted positively to the reference in the motion to the Security Council resolutions and the Attorney-General's opinion that they afforded legal authority to use force against Iraq. Some, like Bruce George, expressed "support [for] the Government because the Attorney-General said… there was a legal basis for the war." (col.802) A somewhat more thoughtful approach was adopted by John Maples when he said "the opinion of the Attorney-General seems to me powerful and well argued." (col.838) Both speakers, as indeed all member of the House, were entitled, if not expected, to adopt the Attorney-General's opinion of the governing law. The quality of the Attorney-General's legal advice ought to be above reproach. The Attorney-General is not any lawyer on the street for hire, but a selected and appointed legal officer of the Crown backed by a large department of legal expertise. Legal counsel from such a

source is normally highly respected, without being unchallengeable. Further, as the expression of professional expertise, it should also be trustworthy in the sense that it is proffered with integrity. By placing it in the public domain, the government invited members of the House of Commons to accept and trust the Attorney-General's legal opinion that invading Iraq was lawful and permissible. But here is the rub. The faulty reasoning in the Attorney-General's statement, as demonstrated previously, suggested to sceptics within and without the House that the government did not provide the opinion publicly as a reliable and non-partisan assessment of the legal situation, but rather advanced it as another tool of political persuasion. If this was true, the government's conduct was a perversion of the political process and a debasement of the legal system to which the government owed its authority to govern.

The largest number of speakers of the three groups was critical of the legal stance at the core of the government's motion. In adopting such a position, it behoved the critics to provide reasons for refusing to acknowledge the Attorney-General's legal opinion. They did so in two ways: by denigrating the author or by denying the integrity of the text. It is unfortunate that the Attorney-General was personally attacked. As noted previously, his authority as legal advisor to the government should be above reproach, but not all members of the House thought it was. The most direct attack was launched by Brian Sedgemore who called the Attorney-General "a commercial lawyer, who, frankly, seems to be out of his depth when trying to deal with this problem."(col.837) Even if such disparagement of the Attorney-General was justified, it does not advance discussion of the legal argumentation in any way. Striking at the competence of the Attorney-General may take down the value of his legal opinion, but offers nothing in its place. Greater attention may more profitably be paid to the critics of the content of the Attorney-General's text.

Some of these critics simply preferred the legal counsel of alternative experts. For example, Peter Kilfoyle, who introduced a wrecking amendment to the motion which was voted down, and Charles Kennedy, his party leader, relied on the opinion of Kofi Annan, the Secretary-General of the United Nations, that invasion of Iraq without a further force-authorising resolution would be contrary to the UN Charter. (cols.781 & 786) It is clear that Kofi Annan's view directly contradicted the Attorney-General's advice, so that in favouring it, these speakers essentially substituted one expert opinion for another. Their contribution to the legal

argumentation in the debate was therefore very limited. Their contestation was not over the legal arguments themselves, but over their legal champions: who, rather than what, was more believable.

Those speakers who offered alternative accounts of the governing law focused on resolution 1441. Michael Moore gave the most explicit consideration to resolution 1441 and, of all the speakers, showed the best grasp of the relevant law and the inferences which might be drawn from it. He first noted that in taking on Saddam Hussein because he ignored international law, the United Kingdom had also to "respect the principles of international law, in whose name we act" (col.831) and hence the importance of interpreting resolution 1441 correctly. As to that resolution, he noted that it talked about a "further material breach," a "final opportunity" and "serious consequences," but he emphasised paragraph 12 in which the Security Council decided "to convene immediately upon receipt of a report in accordance with paragraphs 4 or 11… in order to consider the situation and the need for full compliance…." He concluded that "[i]n weighing up the best way to tackle Saddam, it is the Security Council as a whole that must judge the course of action to take. The Government's efforts in recent days to persuade the Security Council members about their course of action shows that they recognise this truth: however, their arguments have not prevailed. The core of 1441 is about the weapons inspectors. … The process set out in 1441 is not exhausted;" (col.831) In Moore's view, the United Kingdom should not have gone to war against Iraq but should have continued to work within the framework of the United Nations.

A number of members were also puzzled how the United Kingdom and the United States could strive to persuade the UN Security Council to pass a further resolution authorizing collective measures of force and yet claim that none was necessary. As John Baron reasonably asked: "Why did the US and UK try to secure a second resolution if not to provide legal cover for war? … Why does a growing body of opinion, both at home and abroad, question whether resolution 1441 is sufficient justification for war?" (col.835) Jack Straw, the Foreign Secretary, had tried to forestall these obvious questions the night before when he addressed the House in preparation for the forthcoming debate on the motion. He emphasized twice that a further resolution was never needed legally but would have been preferable politically. (March 17 debates, col.703 & 716) The trouble with this answer was that it relied on the doubtful legal opinion of the Attorney-General and thus was also infected with doubt.

In pursuing the issue whether a further resolution was required, several members referred to the statements of Security Council members in addition to the words of the Security Council resolution. John Baron observed how "the American ambassador to the UN was at pains to emphasize at the time that there were no hidden trigger points for war in the resolution." (col.835) John McDonnell, in believing war would be illegal, thought it impossible to "erase the US ambassador's commitment to the UN Security Council partners that resolution 1441 contained no hidden triggers and 'no automaticity'." (col.875) In his closing speech on the motion, Jack Straw also acknowledged that the UK ambassador "told the Security Council when resolution 1441 was passed, there was indeed 'no automaticity' about the use of force." (col.901) Thus, critics of the Attorney-General's legal opinion consequently appeared to have strong support for their reading of resolution 1441 that a further resolution to use force was required from the very governments that opposed such an interpretation.

This apparent paradox was elucidated by Jack Straw towards the end of his closing speech only moments before the House voted on the motion. In declaring there was no automaticity about resolution 1441, he stated that the use of force against Iraq was not conditional on a further resolution but "was entirely conditional on Saddam's compliance or otherwise with the resolution." (col.902) Unfortunately there was no opportunity at this late stage of the debate for any members to comment on Jack Straw's "clarification" before the motion was put to the House, so it will never be known whether it surprised his audience and how much difference it made to the vote. What Straw said presented a blatantly different reading of the resolution. Such diversity of interpretation emphasizes the contentiousness surrounding the intent of resolution 1441 and the variety of ways by which its text, upon close leaning, may be read, all of which should have made the Attorney-General hesitate to state his opinion in such unqualified terms.

6. *Appraisal: Losing the Legal Arguments*

What lessons may be learned about good reasoning when political discourse is interwoven with legal opinion? First, on occasions when the meaning and analysis of legal documents are central to political debate, parliamentarians need to take note of their content in context. In this case, evidently far too few members of the House had acquainted themselves with the Attorney-General's legal opinion or with the substance of resolutions 678, 687 and 1441 and the implications of their joint application. Thus, they were unable to ask probing questions or even profit from the understanding of other speakers who did have some grasp of what the

UN resolutions mandated. Such ignorance was compounded by the group of speakers who declared that legal authority was irrelevant. In consequence, they were ready to intervene in Iraq in breach of the law and visit the vilified Saddam Hussein with violence regardless of legal constraints. However well intentioned such action might be, it would still be a resort to the demagogue's own tactics of asserting a point of view by brute force.

Nor was it adequate, as several speakers did, to assert on patriotic, moral or humanitarian grounds that action against Saddam Hussein was the right thing to do. Indeed, the political discourse was depreciated by the signal failure to appreciate the role the law played in the debate. Law is authoritative in several senses. It may require or prohibit action, thus imposing a legal obligation controlling conduct. Law may also be permissive by granting authority to act. In this sense, law clothes the person addressed by it with a discretionary power to act: it enables action but does not oblige it. The difference in the application of legal authority is striking and crucial. In the present context, the UN Security Council failed to achieve a further resolution after number 1441 to empower states to act against Iraq but the UK Attorney-General said they had legal authority anyway. He did not say the UK was obliged to invade Iraq. Tony Blair came perilously close to, if he did not actually cross the line, in the sense of finding a legal obligation to take action against Iraq in the asserted authority to act. It is difficult to tell for sure because he carefully, deliberately and effectively developed his argument for action principally as a moral obligation. The point to note is that a moral duty does not beget a legal duty, but a legal power does permit a moral duty to be performed. The speakers who ignored the law also ignored this crucial distinction and their arguments, whatever their intrinsic worth, utterly failed to address the prerequisite in the motion whether the forceful actions they desired would be lawful.

Secondly, just because the statement about the governing law was delivered by the Attorney-General should not have clouded appraisal of his advice. Expert opinion is not sacrosanct. It is open to critical scrutiny. An individual, even a well known one, who speaks with the apparent authority of experience and professional expertise, does not have to be believed without question. But the credibility of the contents of a statement by such a person is different from the trustworthiness with which it is presented. Members of the House should have been entitled to trust the integrity of the Attorney-General's statement. Unfortunately, Tony Blair relied on it in a way which suggests that expert legal opinion is essentially of use to the extent that it has political currency rather than

legal integrity.

Thirdly, unreasoned disbelief of the Attorney-General's opinion is as open to criticism as abject acceptance of it. While some speakers doubted the Attorney-General's legal abilities or expertise, other speakers simply preferred contrary opinions of other legal experts. But personal attacks, whether on the Attorney-General or other speakers in the House, or the substitution of alternative "authorities" was hardly a contribution to the discussion. Attacking an opponent is a common political ploy which certainly clouded this debate. But it is most regrettable if this tactic prevented appropriate attention being given to the arguments of speakers, like Michael Moore and John Baron, who did contribute informed and informative views on the legal issue at the centre of debate.

Fourthly, the few speakers who did review the crucial legal sources tended to dwell on the impact of resolution 1441. Some made a textual analysis of it by which they reached an interpretation that contradicted the Attorney-General's view of it. They inferred that the resolution left control over whether action should have been taken against Iraq in the hands of the Security Council, which needed to make the judgment as a whole. This was an effective argument towards a more plausible interpretation than the Attorney-General's since it was developed from what the resolution expressly stated while his depended on inferences from what was not stated. However, these critics may themselves be criticized for not going further back in the Attorney-General's statement and analysing the grounds for his assertion, repeated in the motion, that the authority to use force under resolution 678 had revived. As demonstrated earlier, a much stronger textual critique of the Attorney-General's opinion could have been mounted.

Overall, parliamentarians as a group did poorly at grappling with the law so crucial to the important motion before them. On any future occasion when Parliament may be called upon to decide whether to go to war, the Blair-led debate must not be taken as a model. It was most certainly not a paradigm of well reasoned decision making when the legal meets the political. In addition, the government's own contribution was an example of flawed legal reasoning used to support the politics of persuasion. This way of doing political business defeats the goal of engaging in democratic decision making on the basis of relevant sources of accurate information. Sound legal argument, when necessitated by the issues in debate, should be the recognized and valued partner, and not the prostitute, of political discourse.

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ISSA Proceedings 2006 – An Ideal Of Reasonableness For A Moral Community

1. *Summary*
In this paper I intend to explore the relationship between the pragma-dialectical ideal of reasonableness and the educational objective of providing the framework for a moral education that overcomes ethical relativism. Crucial in this direction is Ernst Tugendhat's (1988) concept of a "moral community", as the community of all people who decide to understand themselves as moral persons. I shall contend that the best and proper way to foster the development of a moral community lies in the Philosophy for Children concept of a "community of inquiry". I have discussed earlier (Vicuña, 1999) the important role that Philosophy for Children can have in achieving this purpose. Now, I shall explore further the important function that learning to argue in a rational and reasonable way has in the building of such a community. Finally, I shall argue that following the pragma-dialectical ideal of reasonableness and the rules for a critical discussion in the teaching of argumentation will provide the necessary grounds for building this moral community of universal mutual respect.

2. *Introduction*
In order to illustrate the problems presented by a relativistic approach in the field of ethical education, I would like to propose two examples of the kinds of controversy that involve ethical related issues in Chile:
(1) To the question whether Pinochet should be brought to trial for the crimes against human rights committed under his regime, there are two opposing

standard ways of answering:
A) Yes, because he said that not even a leaf would move under his rule without his knowing about it, so he must have known about those crimes and, since he had all the power, he must be considered responsible for them. Those crimes should be punished. Therefore, Pinochet should be brought to trial, so that he can be punished.
B) No, because he is an old and sick man and his memory are weak. Therefore, he is no longer able to defend himself. Bringing to trial an old and sick man, unable to defend himself, is against Chilean law, and also against human rights. Therefore, even if Pinochet were guilty, he should not be brought to trial.

(2) To the question whether the "pill for the day after" should be freely distributed in public hospitals to any woman who asks for it, there are also two opposing standard answers:
A) Yes, because every woman is free to decide whether she wants to become pregnant or not. The pill is an emergency contraceptive that can avoid unwanted pregnancy when accidents have created the possibility of pregnancy. Therefore, the "pill for the day after" should be freely distributed in public hospitals to any woman who asks for it.
B) No, because the pill is abortive, abortion is a crime and crimes should be prevented. Public hospitals would become accessories to crime, if they distributed the pill. Therefore, the "pill for the day after" should not be distributed in public hospitals.

There are, of course, many other examples of ethical controversies in which we can distinguish the same kind of opposition between two irreconcilable views. Some of them have to do with euthanasia, homosexual marriage, abortion law, neo-nazis' right to free association, and so on. The awareness of the difficulty of settling these issues in a way that satisfies everyone may lead to skepticism and relativism.
Among the Ancient Greek thinkers the observation that there can be opposite views on almost any subject led to the rise of skepticism. In the sixth century before our era, Xenophanes questioned the existence of any criterion of true knowledge and claimed that if, by chance, a man came across the truth, he would be unable to distinguish it from error. According to Leo Groarke (1990, p. 33), "… Xenophanes seems to be the first to invoke the contrast between opposing points of view [to question the possibility of knowing the truth]." In his criticism of the

current views about the gods, Xenophanes claimed that if oxen and horses could draw, they would make their gods in their own likeness, and he also remarked that while Aethiopians had gods with snub noses and black hair, Thracians had gods with grey eyes and red hair. Groarke (1990, p. 33) adds:

Given such antitheses, Xenophanes concludes that no one can know clear truth, and that conjecture (*dokos*) is wrought over all things (frag.34). According to Sextus [Empiricus], he compares the search for truth to a search for gold in a dark room because one cannot know when one has found it. (AM 7.52)

Other forerunners of Greek skepticism are the sophists Gorgias, who expressed doubts about the possibility of existence, knowledge and communication, and Protagoras, whose saying: "Man is the measure of all things" introduced relativism, stating that there is no absolute knowledge and that each man's views are equally valid versions of what is going on.

The kind of argument that characterizes the sophists is seen in the *Dissoi Logoi* (*Twofold Arguments*), an anonymous treatise found attached to the works of Sextus Empiricus. Rather than defend a definite point of view, it deals with a variety of topics by recounting standard arguments ("put forward in Greece by those who philosophize") for and against a series of opposing points of view, suggesting that they are equally convincing. (Groake, 1990, p. 49)

I would like to suggest that we could easily assemble a similar collection of opposing arguments on contemporary ethical issues. We would probably find that the same standard arguments are repeated over and over again. Are we to take a skeptic and relativistic position in the face of this?

In his article on Skepticism in Paul Edwards' *The Encyclopedia of Philosophy*, Richard Popkin (1972) says that skepticism, as a philosophical methodology, was first formulated in the third century before our era by the leaders of Plato's Academy. These thinkers rejected Plato's metaphysical doctrines and concentrated on Socrates' method of questioning and on his remark "All that I know is that I know nothing". We don't possess any of their writings, but from later writers such as Cicero, Sextus Empiricus and Diogenes Laertius we can get an idea of the kind of arguments they developed.

According to these sources, both Arcesilaus and Carneades reacted against claims made by the Stoics concerning the reliability of some perceptions, which they considered to be signs of the true nature of reality. Arcesilaus and Carneades pointed out that there was no criterion for distinguishing between a perception of

this kind and one that merely appeared to be so; there were no intrinsic marks or signs, which these supposedly "real" perceptions possessed and which illusory ones did not, so that there was no justifiable criterion for separating one type from the other. From this, they concluded that:
1. we must suspend judgment (practice *epoche*) about whether reliable representations of objects actually exist,
2. no assertions about what is going on beyond our immediate experience are certain, and
3. the best data that we can acquire only tell us what is reasonable or probable, but not what is true.

But even skeptics knew that one thing is to live and another to philosophize. We cannot go on "suspending judgment" all the time, when we are continuously faced with urgent problems that require urgent decisions. If, for instance, my thirteen years old daughter were raped I would need to make a quick decision for (or against) the "pill for the day after".

As Groarke (1990, p.17) rightly points out, it is a mistake to interpret ancient skepticism as unmitigated: "The case for the unmitigated nature of ancient scepticism is founded on the sceptics' claim that they suspend judgment (practice *epoche*) on the truth of any claim", but the Greek concept of truth is different from our concept, Groarke explains. For Greek philosophers "truth" (aletheia) meant realist truth, and this is the target of the skeptics' attack:
(…) sceptical arguments are put forward as an attack on realist truth, countering the notion that we can transcend our subjective outlook by arguing that our beliefs are necessarily relative to human nature and perception, the culture that we live in, philosophical commitments, and so on. This reasoning culminates in the decision to suspend judgment on the truth of any claim, but here as elsewhere the concern is truth in the realist sense. The rejection of such truth leaves room for the acceptance of belief in an anti-realist sense, however, and in view of this, the negative side of scepticism is compatible with beliefs that are defined as relative to human nature, sense impressions, forms of understanding, psychological propensities, and custom and convention. (Groarke, 1990, p. 20)

The distinction between unmitigated and mitigated skepticism is fundamental here. While mitigated skepticism can be illuminating both as a method of approaching ethical controversies and for taking reasonable decisions in the face of ethical problems, unmitigated skepticism is untenable, as its opponents have

argued from Greek times on.

3. *The problem of ethical relativism*

Closely connected with the problems raised by skepticism is the question whether it is possible to found ethical predicates in our time. The relativistic approach maintains that it is not possible to establish what is right or wrong absolutely. These predicates are relative to the cultural environment and the particular beliefs of the individuals involved. As David Wong (1994) explains:

Moral relativism (…) often takes the form of a denial that any single moral code has universal validity, and an assertion that moral truth and justifiability, if there are any such things, are in some way relative to factors that are culturally and historically contingent. (Wong, 1994, p. 442)

The questioning of the possibility of establishing moral truth and justifying moral assertions leads to undesirable consequences for such noble human purposes as building a common life, world peace, justice and fraternity. If there is no way of establishing what is right and wrong, and it is not possible to justify moral assertions, there is no other alternative than the recourse to violence, as Ernst Tugendhat (1988) has shown.

The special case of my country's recent history prompts me to look for an answer that overcomes moral relativism. The Chilean situation is that of a country that recovered its democracy after long years of military dictatorship and is still trying to heal the wounds of its violent past. Many people in Chile declare that they aim at the ideal of "national reconciliation", but few are willing to take the necessary steps that might lead to it. One of the main stumbling stones is the difficulty to establish the truth about the causes that led to the violent overturning of a democratic government and to the persecution of its supporters that ensued, especially the fact that this persecution used methods that violated human rights: it was directed against those who had been already defeated, were unarmed and frightened, and in many cases at the mercy of their captors.

Those who had been in favor of the coup, and even participated in Pinochet's government, usually face the issue of reconciliation with a suggestion that we should not keep looking at the past, but concentrate in the future and in the people's "real" problems. On the other side, those who had been persecuted or have lost one or several members of their families at the hands of the repression, state that before reconciliation there must be truth and justice, meaning by this that until the country knows what really happened to the victims of human rights'

violations and the criminals are punished, there cannot be reconciliation in Chile. "Neither forgiveness nor oblivion" is the slogan frequently heard from them.
If we took a relativistic approach to ethics, we would have to say that overcoming this difficulty is impossible. Each side has its own story, its own perception of how things happened, and this is "the truth" for each of them. Starting from this assumption, it would be obviously very improbable that a national reconciliation could be brought about in Chile.

A way out of this problem can be found in Ernst Tugendhat's (1988) solution to the problem of the foundation of ethics in our time. According to Tugendhat, there are two ways in which ethical predicates can be founded; one he calls the "authoritarian" way and the other, the "autonomous" way. The authoritarian foundation of ethics rests on an appeal to a religious or a traditional authority, for example, when we say that stealing is wrong because God said: "Thou shalt not steal". In Tugendhat's view, this and similar foundations are no longer acceptable in modern, post Kantian times. The appeal to "superior truths", as he calls these religious or traditional beliefs, which are invoked to support ethical propositions but cannot be founded themselves, is no longer possible, because the idea of a rational confrontation between the competing founding predicates would be illusory (Tugendhat, 1988, p. 142).
The solution that Tugendhat proposes is to found ethics on an autonomous personal decision of willingly submitting oneself to the rules of a moral community determined by universal mutual respect. The reason anyone would have for making this decision is his or her desire of living in a community governed by moral norms. Thus, belonging to a moral community is in the individual's best interest, and this is the motivation for submitting to the community's norms. This autonomous foundation of ethics is weaker than the authoritarian, but is the only one that is possible in our time. If a person makes the decision in favor of morality, he or she submits him/herself to the rules of a moral community determined by universal mutual respect, which is equivalent to live in accordance with Kant's categorical imperative, and this, in Tugendhat's view, is the same as the impartial application of the *golden rule*. (Tugendhat, 1988)
I have argued elsewhere (Vicuña, 1999), that an important consequence that follows from Tugendhat's ethical theory is that ethical education has to be approached in a dialogical way, appealing to the children's and the young people's motives for making the decision in favor of morality, and that the best

setting for doing this is the building of a "community of inquiry" as it is regularly practiced in Philosophy for Children.

4. *The concept of a "Community of Inquiry"*

By a "community of inquiry", the people involved in philosophy for children mean the group formed by the teacher and the students who are engaged in philosophical inquiry. According to Lipman et al. (1980, p. 45),

When children are encouraged to think philosophically the classroom is converted into a community of inquiry. Such a community is committed to the procedures of inquiry, to responsible search techniques that presuppose an openness to evidence and to reason. It is assumed that these procedures of the community, when internalized, become the reflective habits of the individual.

The authors go on to mention certain conditions that are prerequisites for the construction of a community of inquiry. These are "the readiness to reason, mutual respect (of children towards one another, and of children and teachers towards one another), and an absence of indoctrination". And they add: "these conditions are intrinsic to philosophy itself, part of its very nature, as it were…" (Lipman et al., 1980, p. 45)

Several features of the community of inquiry may be considered to coincide with those of Tugendhat's moral community. They could be summarized, it seems to me, in two:

1. the requirement of mutual respect "of children towards one another, and of children and teachers towards one another", which I take to be stated so explicitly in order to stress the egalitarian character of the community, and
2. the requirement of reasonableness and rationality, expressed in the phrases "committed to the procedures of inquiry", "responsible search techniques", "openness to evidence and to reason", "reflective habits", "readiness to reason", "absence of indoctrination".

Tugendhat's moral community "determined by universal mutual respect" is certainly present in embryo in the community of inquiry, and, more importantly, the children who experience for themselves what it means to be a member of a community of inquiry are better prepared to make a personal decision in favor of morality, because they have experienced what it is to be treated with respect, to care for each other, to help each other and to feel responsible. They have become aware of their moral feelings and they realize that they want to be respected and to live in a society where all members respect each other equally. They are also

well equipped to deal with ethical controversies, because they have acquired the "reflective habits", the commitment "to the procedures of inquiry" and the "responsible search techniques" that are required for this purpose.

Moreover, in the community of inquiry, there is a common quest for knowledge and understanding that manifests itself in mutual challenge and cooperative thinking, at the same time:

[In the community of inquiry] students listen to one another with respect, build on one another's ideas; challenge one another to supply reasons for otherwise unsupported opinions, assist each other in drawing inferences from what has been said, and seek to identify one another's assumptions. (Lipman, 1991. p. 15)

The mutual relations of the students described here go beyond mere intellectual curiosity. Their mutual challenge and cooperative thinking produce the "self correcting" effect of the community and the "personal and interpersonal growth" of its members sometimes referred to as "caring thinking":

As the children discover one another's perspectives and share in one another's experiences, they come to care about one another's values and to appreciate each other's uniqueness. Thus they construct through dialogue a small community whose commitment is to inquiry and whose members are caring participants in that community. (Lipman et al., p. 199)

The concept of "caring thinking" calls attention to the importance that affective and emotional aspects have in the building of a community of inquiry. Becoming a reasonable person, in this sense, implies learning to care for and to respect each other. There is no better way for preparing children to willingly become members of a moral community of universal mutual respect.

One may want to ask: why is it that engaging in philosophical inquiry can help develop good reasoning, as well as reasonableness and "caring thinking" as a basis for a moral life?

I would like to suggest that the answer to this lies in the rational procedures of this inquiry and the values of respect for each other, for the inquiry's procedures, for consistency and for honesty that it entails. These are features of philosophical inquiry, of scientific inquiry, and of critical thinking in general. And, as we shall see, they are also characteristic of the pragma-dialectical ideal of reasonableness and the "rules for critical discussion" formulated by it.

5. *The pragma-dialectical ideal of reasonableness*

The community of inquiry's commitment to reasonableness can be described as the willingness to practice the critical and reflective attitudes that are characteristic of philosophical thinking. On the other hand, the community of inquiry is also modeled on scientific inquiry.

According to Lipman (1991), the expression "community of inquiry" was probably first used by Charles S. Peirce in relation to scientific inquiry, to stress that scientists use similar procedures in the pursuit of identical goals. I interpret this to mean that scientists around the world form a community whose members understand each other and cooperate with each other, even if they live far away from each other. They can do so because they use the same scientific language and follow the same rules and procedures for conducting experiments, evaluating the relevant evidence and testing their theories.

In addition to this, scientific inquiry is marked by the fact that scientific conclusions are always provisory, they are always open to be revised in the light of new evidence, and scientists are fond of inviting challenge in order for science to progress. Gilbert (1997, p. 137) describes the Popperian approach to scientific progress as follows:

Put simply, the view postulates that scientific hypotheses are put forward, then placed in a position where they can be falsified (Popper, 1979). If they are falsified, then they are abandoned and a newer, better view is adopted. This accounts for progress.

The pragma-dialectical ideal of reasonableness, on the other hand, has several features in common with scientific inquiry and philosophical inquiry.

Van Eemeren and Grootendorst (2004, p. 123) explain that, in the study of argumentation, a concept of reasonableness is indispensable, because it is necessary to appeal to "a rational critic that judges reasonably" in order to be able to indicate whether or not an argumentation is valid.

At first it seemed obvious to look at the model of scientific inquiry and to ask the philosophers of science for their concept of reasonableness.The process of scientific research is often regarded as the paragon of reasonableness. Even though it is pointed out nowadays that irrational elements play an important role in devising scientific theories, many epistemologists still regard the process of scientific research as the prototype of a purposive rational discussion and the most pronounced exchange of ideas. (van Eemeren & Grootendorst, 2004, p. 125)

Unfortunately, there is no agreement among philosophers of science on a concept of reasonableness. In fact, according to van Eemeren and Grootendorst, looking

for an answer in this field raised more problems than were to be expected.
In formulating their pragma-dialectical ideal of reasonableness, the authors reject both the "anthropological" concept of reasonableness that prevails among some argumentation theorists and the "geometrical" concept of reasonableness favored by formal logicians. The reasons for this are that the first is relativistic and the second is only attainable in mathematics and formal deductive logic. In order to overcome the limitations of an excessively relativistic and an excessively normative approach, they adopt a "critical-rationalistic" ideal of reasonableness.
Characteristic of this ideal is to conceive argumentative discourse as part of a critical discussion aimed at resolving a difference of opinion. Therefore, argumentation should be treated as "a rational means to convince a critical opponent and not as mere persuasion" (van Eemeren & Grootendorst, 1992, p. 10) and the dispute "should not just be terminated, no matter how, but resolved by methodically overcoming the doubts of a rational judge in a well regulated critical discussion." (van Eemeren & Grootendorst, 1992, p. 11).

The central features of this ideal can be summarized as follows:
1. Since we cannot be certain about anything, we ought to be skeptical about any pretension of acceptability, no matter who presents it and no matter what it is about.
2. The critical perspective centers pre eminently on discussion and stimulates that each party's standpoints be systematically tested against the doubts of the other party.
3. In this way, argumentation is made to become explicit and this, in turn, can be submitted to questioning until the difference of opinion is resolved in a way that is acceptable to all parties involved. (van Eemeren & Grootendorst, 2004)

It seems to me that a healthy skepticism, the willingness to examine every claim in the light of reason and evidence, the effort of doing this through philosophical dialogue, analyzing and evaluating reasons and keeping an open mind to take into account all possible objections, and all proposed alternative ways of looking at the problems, are features of the community of inquiry that closely resemble the pragma-dialectical perspective of reasonableness just cited.
In addition to the ideal of reasonableness, another important contribution of Pragma-Dialectics to critical thinking is the formulation of the rules for conducting a critical discussion. I have attempted elsewhere (López & Vicuña, 2003) to show that the principles underlying these rules go far beyond the

requirement of rationality manifest in such rules as command relevance and the use of appropriate argumentation schemes. There is in the rules a concern for respecting freedom of speech, responsibility, consistency, truthfulness and avoidance of manipulation, which are indicative that the principles underlying them have much more to do with ethical concerns and "caring thinking" than it would seem at first sight.

6. *Conclusion*

The ethical and political controversies of our time are not so different from the problems that gave rise to Greek skepticism. Just as these thinkers adopted a mitigated skepticism, as a philosophical method, and chose to suspend judgment on the absolute reality of their perceptions, while examining and questioning their own and each other's beliefs in discussions modeled on a Socratic method of questioning and answering, so the members of a "community of inquiry", the participant of a "critical discussion" and the members of a scientific community practice a mitigated skepticism as a way of avoiding dogmatism, progressing in knowledge and understanding and respecting the diversity of perspectives that enrich human life.

The pragma-dialectical rules for a critical discussion, formulated by van Eemeren & Grootendorst, and their philosophical ideal of reasonableness give support to the Philosophy for Children belief that the building of a community of inquiry develops reasoning skills, reasonableness and caring thinking in those involved in it. These, in turn, are fundamental for the building of a moral community of universal mutual respect.

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ISSA Proceedings 2006 – Talking At Cross Purposes: Violating Higher-Order Conditions With Oppositional Arguments

Imagine walking into a room and preparing to watch a policy debate between two teams, one affirming and one negating a particular topic. The debaters participating have been instructed to debate about whether or not the United States should accede to the Kyoto Protocol, thereby implementing massive reductions in fossil fuel emissions throughout the country. The first team stands up and defends Kyoto, claiming that global warming threatens global biodiversity. After a brief transition, the second team responds by claiming this debate is really just a hallucinatory intellectual game that undermines personal agency and real world activism. Instead of answering the arguments in favor of Kyoto, they criticize the forum as bereft of real world benefit and as a distraction from engaged

citizenship. The first team stands up and in an effort to regain control over the discussion proclaims that these arguments have noting to do with the topic at hand and are violations of the norms established for the debate, one of which is a direct discussion of the topic from opposing viewpoints. The rest of the debate centers on whether the rules are a necessary precursor to the activity and whether or not the individuals sitting in judgment of this debate have the right to vote in favor of arguments that are irrelevant to the discussion at hand. While this seems like a peculiar situation it is one that plays out at almost every major national intercollegiate policy debate tournament throughout the United States every year. This paper is an attempted response to these episodes of argumentation rooted in a discussion of argumentation theory and debate practice.

1. *Normative Pragmatics*

The pragma-dialectical approach to argumentation, developed by Fans H. van Eemeren and Rob Grootendorst (1984; 1992; 2004) is a normative and descriptive model for the reconstruction of argument and a corrective for problematic argumentative techniques. An important entailment of subscribing to this method is the belief that argumentation's telos is the reconciliation of differences through the use of a particular normative model coined by Eemeren and Grootendorst (2004) as "critical discussion." While they admit that argument often does not follow the norms they establish for critical discussion, they contend that as a heuristic for understanding argument and the ways in which argument might be improved, the critical discussion offers insightful and crucial illumination. Eemeren and Grootendorst (2004) suggest that in the pragma-dialectical approach to argument, the rules developed, "are not algorithmic, but heuristic" and that argumentation is, "not a mechanical process but a social activity aimed at convincing others of the acceptability of a standpoint by removing other people's doubts" (p. 35).

Primary to the development of their model of critical discussion is the notion that certain "higher-order conditions" must be at play in order to allow for true reconciliation among opposing parties (Van Eemeren, Grootendorst, Jackson, and Jacobs, 1993, p. 30; Van Eemeren and Grootendorst, 2004, p. 189). These higher-order conditions create the grounds for symmetrical engagement based on removing the power and privilege commonly associated with particular identities and institutional dynamics in society (Van Eemeren et al. 1993, p. 33; Van Eemeren and Grootendorst, 2004, p. 189). In addition, these conditions work to

produce the psychological orientation critical for the proper functioning of the practical rules for argumentative discussion (Van Eemeren et al., 1993, p. 32; Van Eemeren and Grootendorst, 2004, p. 189).

In developing this cooperative telos for argumentation, pragma-dialectical theorists have suggested that the empirical study of argument in practice is essential both from theoretical and pedagogical points of view. As an exercise in what they call "normative pragmatics" (Van Eemeren et al., 1993, p. 2; Van Eemeren and Grootendorst, 2004, p. 9-11) these theorists look for examples of speech acts which bring into existence episodes of argumentation. Accordingly, case studies can help to teach students of argument how the critical discussion operates as a normative ideal and practical method of dispute resolution. The analysis of particular episodes of argument, especially those that might be seen as anomalous, can help to reveal the benefits of accepting the critical discussion as a modus operandi for mediating disagreements. Van Eemeren and Grootendorst (2004) suggest that empirical analysis, especially aimed at, "research on the question of to what extent ordinary language users in everyday contexts really tend to resolve their differences of opinion by means of the kind of discussion favored by dialecticians" (p. 31) is crucial.

As an example of scholarship rooted in normative pragmatics, this paper is an attempt to utilize innovative practices in the American intercollegiate academic debate community as a means to problematize the role of critical discussion in mediating disputes.**[i]** While the debate community may not represent argument in the "every day" sense as described above, this community is constantly engaged in the development and (re)negotiation of argumentation and, for this reason, represents an essential empirical example for argumentation theorists. Developments in the debate community illustrate that in certain circumstances, higher-order conditions become the object of discussion themselves perhaps undermining their unquestioned normative function. In these disputes, intercollegiate academic debaters appear to talk at cross purposes, one side highlighting the benefits of traditional approaches while the other claims that these traditions should be rejected or revised. This intervention into both debate practice and argumentation theory will begin with a description of the claimed inter-subjectively agreed upon norms of academic debate. Next, an evaluation of the connection between the norms of debate and the notion of higher-order conditions is undertaken in order to parse out two primary contributions this paper hopes to make to the pragma-dialectical approach and argumentation theory generally:

(1) that the norms and rules established in the notion of the critical discussion can become the object of argumentation without undermining the resolution of disputes, and,
(2) that the practice of debate can and should provide empirical grounding for the development of argumentation theory.

2. *Destabilizing the "Received View"*

The American intercollegiate academic debate community is organized around a set of practices that have been established through years of dialectical engagement and reflexive (re)construction. The example at the beginning of this paper should suffice to suggest that there are currently at least two (and probably more) competing sets of norms for dialectical engagement in the debate community. The controversy brewing between the more traditional conception of debate and its counterpart, as yet ill-defined, is the primary focus of this section. According to the traditional concept of debate, participants focus on the policy question posed in the resolution, a brief statement that is crafted over months of deliberation by the debate community and changed on a yearly basis.**[ii]** This resolution becomes the organizing text through which students are given access to research agendas which focus on the policy outcomes of its acceptance or rejection.**[iii]** These research practices, focused on the literature available on the given topic, enhance the development and presentation of argumentation that is, according to this view, central to the goals of the community. The argumentative and research practices described here are the primary aspects of what is commonly referred to as switch-sides debating. While there is not a necessary connection between switch-sides debate and policy-based analysis, argumentative practices suggest that individuals often defend both in tandem arguing that in order to have well-defined "sides" in a debate, there must be a focus on a policy question with a predictable literature base. For many debaters, these norms are understood as the central pillars of dialectical engagement throughout the community and thus function as the received view of appropriate argumentative practice for most participants.

Argumentation and debate scholars have produced a number of persuasive defenses of this received view that cover its pedagogical, practical, and professional benefits for participants. Some argue that debate effectively teaches students how to engage in argumentative practices that translate into engaged democratic citizenship (Ehninger and Brockriede, 1972, p. 25) while others argue

that debate prepares participants for future employment in law or politics (Panetta, 1990). Gordon Mitchell (1998) has put forward perhaps the most persuasive defense of debate as an activity that can help to bridge the gap between the technical aspects of involvement in the contest round and effective public advocacy (See also Damien Pfister and Jane Munksgaard, 2005). The notion that switch-sides debate is critical to future public advocacy is often used as a starting point for claiming that it is ethical to engage in this practice. For example, Nicholas Cripe (1957) and Star Muir (1993) have argued that debating both sides produces ethical citizenship through providing a deeper understanding of opposing arguments. Muir (1993) writes that researching and debating both sides of a topic is, "essential for effective critical thinking and in turn for the development of a reasoned moral identity" (p. 290). It is important to note, however, that this defense of a multivalent argumentative posture is rooted in the ability of debaters to view topics from both sides rather than making arguments that are not related to the resolution at hand.

Certain changes in tournament practice are beginning to rupture this received view of the activity. One such transition is mutual preference judging (MPJ). Under this system participants rank the judges at any given tournament in order to control, to some extent, who will end up watching and passing judgment in their debates. Judges, in response to this process, have written increasingly specific "judge philosophies" or documents which suggest the types of arguments they prefer and how they will evaluate them. This has created a divide in the community based on the increasingly stark distinction between judges and debaters in terms of the practices that they think are appropriate in the contest round. In many cases, the judges and debaters who agree with one another on the parameters of the activity are paired. Very few judges bridge this divide. Cass R. Sunstein (2003) has dealt with this phenomenon calling it "enclave deliberation" (p. 82). This process whereby individuals who agree with one another form argumentative enclaves often leads to increasing agreement and radicalization of the viewpoints in these groups, a process Sunstein (2003) calls "group polarization" (p. 81). Mitchell and Takeshi Suzuki (2004) suggest that debate might counter-act the trend in the larger society toward "group polarization" by promulgating the switch-sides model; however, the above indicates one way in which debate itself fosters the development of enclave deliberation. If debaters can choose the critics who will be watching them, then they can easily construct the right parameters for a debate in which they run arguments which violate or

reinforce convention.

These changes in debate practice and tournament procedure have opened the door for transforming notions of switch-side policy-oriented debate; however, they are only part of the shift away from this traditional format. An additional challenge to the received view discussed above is based in a nuanced critique of switch-side methodology and pedagogy in debate and argumentation scholarship. An illustrative example of questioning the received view in debate scholarship can be found in an article by Ronald Walter Greene and Darrin Hicks (2005). They argue that switch-sides debate creates a "field of governance" that "allows liberalism to trade in the global cosmopolitan marketplace at the same time as it creates a field of intervention to transform and change the world one subject (regime) at a time" (p. 121). In other words, the switch-sides model produces a conception of debate attached to democratic citizenship and the promulgation of democratic ideals in general. Here, democratic citizenship is equated with a mode of cultural imperialism. This stance challenges the often non-reflective acceptance of democratic citizenship and liberal notions of deliberation in debate pedagogy and scholarship.

In addition, there is an as yet unseen connection between the current argumentative shift occurring in debate and the development of cutting-edge research concerning opposition to traditional argumentative norms in the public sphere. Kathryn M. Olson and G. Thomas Goodnight (1994) suggest that arguments which "work outside and against traditional practices of influence," (p. 250) can be understood as oppositional arguments. For them, "oppositional argument unsettles the appropriateness of social conventions, draws attention to the taken-for-granted means of communication, and provokes discussion" (p. 250). It is easy to make the connection between this sense of argument and the techniques currently being utilized by debaters who hope to unsettle conventional norms of the received view. It is also appropriate to note here that Goodnight (2004) proposes a notion of controversy that is tied directly to his work with Olson (1994) on oppositional argument. Goodnight (2004) argues that, "The jostling among practices of communication generates contestation over claims to rightness, truthfulness, propriety, sincerity, and their opposites for any particular claim. Disputation over such communication claims engenders several distinctive types of controversy" (p. 170). Goodnight also suggests that controversy in this sense is currently growing given changes in technology and an increased awareness of pluralism (p. 170). Any successful argumentation theory which

hopes to develop a resolution-oriented telos (Van Eemeren and Grootendorst, 2004, p. 41) must deal with the nature, scope, and resolution of controversies that center on communicative practices. For this reason, I hope to extend the terminology and perhaps add an empirical example of oppositional argument to this burgeoning scholarship.

While there are growing challenges to the received view of academic debate in both theory and practice, some scholars have responded to this oppositional turn by claiming that it is trivial and undermines the pedagogical role of debate practice. For example, Robert C. Rowland and John E. Fritch (1989) argue that,

Meta-debate has significant disadvantages from a pedagogical perspective. Debate about debate has a tendency toward triviality. Outside of the narrow confines of debate, many issues involved in debate theory have no application. In addition, a focus on debate theory may distract debaters from consideration of the substantive issues involved in their topic. (p. 460)

For Rowland and Fritch (1989), "debate about debate" (p. 457) is bereft of pedagogical value because it has no application outside the confines of the debate round. Ultimately, they argue that the educational value of the game of debate itself is potentially at risk. In addition to the pedagogical disadvantages of meta-debate, Rowland and Fritch (1989) cite the role of the judge in adjudicating debates that depart from the topic at hand as another major concern. They write that, "Debate practice makes it clear that any attempt to remove all subjectivity from argument evaluation is doomed to failure; thus the critic must be willing to make a commitment to a given standard, in order to protect the rationality of the process" (p. 461). Given the subjectivity inherent in the role of the judge in the debate round made explicit in this view, lines must be drawn as to what sorts of arguments are allowable. Otherwise, judges are left wondering how to delineate between legitimate and illegitimate forms of argumentation. Fears concerning a lack of rules and procedures for intercollegiate academic debate have led to a direct response by certain members of the debate community. In 1985, the American Debate Association was established. One of its missions was the creation of a form of academic debate based primarily of the switch-sides policy-oriented approach (see Warren D. Decker and John T. Morello, 1990). While these scholars are responding to a different meta-theoretical intervention into debate practice than the current oppositional turn, they definitely prefigure the ways in which debaters and judges have begun to respond to the onset of oppositional

arguments.

This section has provided a basic sense of the controversy underway in the intercollegiate academic debate community. Certain practices undertaken by tournaments, debaters, and scholars have given rise to an increased questioning of the received view. This debate within the debate community is ongoing, based on a long history of similar challenges, and has high stakes for scholars interested in studying the benefits of debate as a mode of argumentation pedagogy. With this ongoing controversy in mind, I now turn to the synergies between the received view norms of debate described above and the model of the critical discussion and higher-order conditions in the pragma-dialectical approach to argumentation.

3. *Placing Conditions on Dialectical Engagement: The Pragma-dialectical Approach*

Rowland and Fritch (1989) present real concerns about the onset of oppositional arguments in the debate community, specifically that these arguments erode the pedagogical value of the activity, do not translate into real world practical skills, and lead to trivial dialectical encounters (p. 460). They argue that certain norms of argumentation, specifically meta-theoretical interventions into the contest round, erode the switch-sides policy-oriented model with its focus on "substantive issues." This section suggests that the norms tied to the received view of debate defended by Rowland and Fritch (1989) mirror the higher-order conditions (Van Eemeren et al., 1993; Van Eemeren and Grootendorst, 2004) which are critical to the pragma-dialectical conception of the critical discussion. In both instances, certain norms of interaction are posited as crucial for the maintenance of dialectical value and, in the case of the critical discussion, for the resolution of differences.

At the outset, I must admit that there is one major problem concerning the application of debate as an empirical example in this context. Debate presupposes a judgment by an individual not involved in the discussion. A judge that is external to the dialectic is not appropriate within the notion of the critical discussion. In this regard, Van Eemeren and Grootendorst (2004) claim that, "A difference of opinion is only resolved if a joint conclusion is reached on the acceptability of the standpoints at issue on the basis of a regulated and unimpaired exchange of arguments and criticism" (p. 58). For pragma-dialectical theorists, the acceptance of a judgment by a non-discussant stands directly

opposed to their notion of resolution-oriented dialectical exchanges. In these exchanges, discussants use speech acts according to a set of discussion rules to convince each other to either accept or reject a particular standpoint (Van Eemeren and Grootendorst, 2004, p. 188). This is done without the imposition of an external judgment.

Despite the fact that debate presupposes judgment by a non-discussant, it can still prove useful in unlocking the potential challenges that debate can pose for pragma-dialectical theory. One way to deal with the problem of the judgment is to suggest that the judge in intercollegiate academic debates is not separate from the dialectical engagement taking place between the debaters. Balthrop (1983) claims that the adoption of a critical hermeneutical stance by the judge allows the judge to participate in the dialectical engagement and render judgments that are rooted in a deep interpretive relationship with the debaters (p. 5). If we view the judge as a participant and discussant of a sort, then this potential gulf may not represent a theoretical quagmire. In this sense, we can at least provisionally view the judge as a participant, albeit with a slightly different dialectical role in the debate.

With this possible lacuna between debate and the critical discussion at least provisionally sealed, I now turn to developing my primary argument that recent trends in intercollegiate academic debate, specifically the increasing incidence of oppositional arguments, present something of an anomaly for argumentation theorists. For this reason, it is useful to consider how the real arguments at play in the debate community provide room for analyzing pragma-dialectical theory. In order to develop this claim, I turn first to a discussion of the conditions which pragma-dialectical theorists hold as essential for resolution-oriented argumentation. Van Eemeren et al. (2003) define "higher-order conditions" as "conditions that would have to hold in order for the [argumentative] system to lead to resolution" (p. 30). They stress that "Not only must participants be willing and able to enter into a certain attitude, they must be enabled to claim the rights and responsibilities associated with the argumentative roles defined by the model" (p. 33). For pragma-dialectical theorists, the organizing god-term for the ideal argumentative system is the critical discussion.

In the model of the critical discussion, "argumentative discourse is conceived as aimed at resolving a difference of opinion by putting the acceptability of the 'standpoints' at issue to the test by applying criteria that are both problem-valid as well as intersubjectively valid" (Van Eemeren and Peter Houtlosser, 2003, p.

387). In other words, the conditions associated with the critical discussion have to do with mapping out legitimate problems (or standpoints) for discussion which can be agreed upon by the discussants. Within this model of the critical discussion, there are three types of conditions which must be met. “First-order conditions” are represented by the discussion rules or the “code of conduct” (Eemeren et al., 1993) to be followed at various stages of dialectical engagement. A complete discussion of these rules is not possible in the space of this paper; however, Van Eemeren and Grootendorst have already provided a detailed analysis of the code of conduct to be followed in critical discussions (2003; 2004, p. 123-157).

The next two types of conditions deal with the opinions and psychology of the discussants and are therefore referred to as higher-order conditions because they are rules which must be followed in order for the critical discussion to unfold in the first place. The first of these sets of conditions, which reinforce the first-order conditions mentioned above by pedagogically reinforcing the discussion rules (Van Eemeren and Grootendorst, 2004, p. 192), are referred to as, “Second-order conditions [which] include internal states of arguers having to do with their motivations to engage in a critical discussion” (Van Eemeren et al., 1993, p. 32). According to Van Eemeren and Grootendorst (2004) this psychological state is achieved through the incorporation of the “10 Commandments” of the critical discussion (p. 190-196). Each of these commandments can be viewed as a higher-order condition because they are all critical to an appropriate mental state from which to begin a dialectical encounter. Finally, Van Eemeren et al. (1993) identify a third class of conditions which, “stress the importance of political ideals such as nonviolence, freedom of speech, and intellectual pluralism as well as practical constraints and resources for empowering critical discussion” (p. 33). In order for a critical discussion to function, basic notions of human rights and a commitment to discourse above and beyond violence, power, and privilege must be top priorities.

The first and second-order conditions described above provide the most direct analogue to the debate context. In the critical discussion, individuals are asked to enter with the intention of resolving a dispute. Refusing to discuss the dispute at hand with intent to resolve it violates the second-order conditions and thereby undermines the resolution of the dispute. In the debate context, debaters are asked to enter into a discussion of a given topic with the intent of providing a judge with the necessary arguments to either affirm or negate this topic. By

refusing to come to some kind of agreement about the stated problem in the resolution, debaters may be violating the higher-order conditions of the activity described as the received view in the previous section. This, in turn, potentially circumvents a resolution-oriented discussion. In this case, the appropriate resolution of the dispute would most likely be a provisional judgment concerning the advisability of either affirming or negating the topic at hand. A debate focused on this question would, following this logic, be critical to the framing of this judgment.

One of the primary claims posited by those who have responded negatively to the rise of oppositional arguments in debate is the notion that certain conditions preclude these types of arguments. Very often, teams that are faced with answering oppositional arguments will run topicality,**[iv]** defenses of switch-sides debate which view this framework as necessary to the continuation of the activity, and rules-based arguments about the division of ground in the debate.**[v]** These are all forms of higher-order conditions in the sense that they are posited as necessary precursors to not only effective argument but also the existence of the activity and the possibility for discussion and resolution in the first place.

Rules violations in current debate practice provide a glimpse into the multiple comparisons that might be drawn between debate and pragma-dialectics.**[vi]** They indicate at least initially that oppositional arguments can be read as violating the higher-order conditions of the debate community. The conditions made possible through years of development in debate theory and practice also appear, in this initial glimpse, to fit into the higher-order conditions at the heart of pragma-dialectical theory. However, it is appropriate to mention here that while the first and second-order conditions map quite nicely onto the debate context and aid in an interpretation of oppositional arguments as violations of the norms, the third-order conditions outlined by Van Eemeren and Grootendorst (2004) and Van Eemeren et al. (1993) tell a slightly different story. If the argument that the debate community is inherently asymmetrical in terms of race and class is correct as some debaters have suggested, then the higher-order conditions have not been met.**[vii]** Remember that the third-order conditions respond directly to the need for resolving power inequalities and issues of privilege (Van Eemeren et al., 1993, p. 33). This is at least one example of pragma-dialectics opening up space for oppositional argumentation; however, second-order conditions can still function as a site for contestation between the empirical example of debate and the normative principles of pragma-dialectics as

already suggested.

The key test at this point is to determine how and to what extent, given the violations of the second-order conditions outlined above, oppositional arguments have reduced the possibility of resolving debate rounds adequately. To return briefly to an earlier discussion, it is critical to note once again that debate is a competitive activity, quite distinct from the resolution-oriented model of the critical discussion. However, the primary normative driving force for the theory of the critical discussion is that it is the only way for disputes to be resolved. In the context of debate, there are decisions handed down by judges. These decisions must meet with the larger debate community's expectations (Balthrop, 1983, p. 10) implying that some level of resolution is at play within the normal activities of the debate community. If oppositional arguments undermine this process, then the first and second-order conditions of the critical discussion can be affirmed as the needed corrective in this instance.

Despite the arguments made by Eemeren et al. (1993) that "codes of conduct" must be in tact and discussants must remain committed to the ideal rules of discourse, judgment in the debate context has not been rendered impossible at this point. Tournaments continue to happen and decisions continue to be rendered much like they always have been. This suggests that debate is something of a counter-point to pragma-dialectical notions of argument which require that the established rules be followed. Instead, debaters and judges seem to be engaged in a negotiation about what appropriate argumentative strategies are on a consistent basis while retaining the grounds of judgment and resolution in the activity. According to Hicks and Lenore Langsdorf (1999), "there seem to be only two ways that regulation can be made effective: rules can be imposed either hegemonically (implicitly) or autocratically (explicitly); or rules can be chosen by participants" (p. 154). In accepting this read of proceduralist approaches to argumentation, one could easily justify oppositional argumentation as the needed defense against autocratic and hegemonic application of dialectical norms within the debate community. For this reason, the recent rise of oppositional arguments in debate does not signal the end of the line for the activity as Rowland and Fritch (1989) suggest. Instead, it signals growth in the activity ushered in by an increasing respect for the role of subjects in their research and discourse habits. In fact, if anything, the ongoing discussion of the norms of debate in the contest round, and its augmentation in debate scholarship (Greene and Hicks, 2005) indicates that debate can make room for oppositional

arguments without giving up the potential for resolution through judgment. Finally, this line of argument also suggests that the pedagogical benefits of the activity itself are perhaps best maintained by allowing debaters to *choose* the norms the community should follow as opposed to *enforcing* the norms through judgment.

Debate and argumentation scholars have already suggested that rules are not only legitimate for discussion but are always already a part of ongoing discussions. Michael Billig (1996) has argued that, "Rules can be objects of argument, just as much as Terrence's plays could be the topic of heated debate" (p. 50). He goes on to suggest that, while a wide area of agreement is central to the resolution of disputes (p. 53), rules concerning how disputes are to be negotiated are only recognizable because they have been subject to wide disagreement: "The game and its rules are only comprehensible because there is more to social life than rule-following" (p. 52). In other words, without heated ruptures in the day-to-day interactions of discussants, there can be no justifiable set of norms for a group to follow in the first place.

Balthrop (1983), writing about the issues involved in adjudicating such rules-based disputes in debate practice suggests that judges view themselves as "critics of argument." This perspective provides, "a general orientation for many judges and encourages an emic approach, thus allowing evaluative criteria to emerge from each debate, while also permitting each judge to rely upon his or her own areas of expertise to 'make sense of' what happens in the debate" (p. 2). In other words, judges already have a model of interaction with the debaters and their speech acts which they can follow in the resolution of disputes that allows for oppositional modes of argument. In fact, for Balthrop (1982) this is the way argument often plays out in the context of debate practice. His theoretical insight provides a critical telos for the study of argumentation and its use as an alternative to the imposition of norms. He writes that, "as each of these potential sources for change generates the possibility of competing interpretations, argument becomes an essential factor for resolving these conflicts and for recreating shared consensus about reality" (p. 239). The discussion and (re)interpretation of norms, far from eroding intersubjective agreement and judgment, helps the process of argumentation to produce a more fully realized intersubjective agreement concerning the norms of the given community. Even during the early 1980s, it seems, scholars were preparing for the inevitability of rules violations and saw the process of argument as opposed to the imposition of

rules and procedure as the needed corrective.

Fundamentally, then, trends in debate practice and argumentation scholarship suggest that there is room for oppositional modes of argument. In addition, these modes of argument, far from destabilizing the structure of debate, provide for its ongoing manifestation. Debaters, following this view, are not currently talking at cross purposes but are instead engaged in an oppositional framework that ultimately and at first glance counter-intuitively, allows for a cooperative process of norm creation. As an empirical example, debate allows for critical scrutiny concerning the second-order conditions in pragma-dialectical theory. Speaking in terms of a broader context, oppositional argument as a technology of dialectical engagement suggests that rules-based and/or norms-based approaches to argumentation are not necessary to the ongoing resolution of disputes.

4. *Revisions in Theory and Practice*

This paper has been an attempt to answer the constitutive call first leveled at debate scholars and argumentation theorists by Goodnight (1981) to engage in research and scholarship aimed at reconciling debate practice and argumentation theory. Several argumentation scholars (Rowland and Fritch, 1989; Kauffman, 1991) have responded to this call by bringing argumentation theory to bear upon debate practice. These responses have been in line with Goodnight's (1981) argument that, "a significant gap seems to be developing between theories of argument and theories of debate. Many contemporary theorists do not extend their insights into the realm of debate" (p. 415). The view that debate functions as a laboratory for testing theoretical innovations is not a new one and in fact pre-dates Goodnight. For example, Annabel Dunham Hagood (1975) argues that, "If the tournament is viewed as the laboratory in which theory is applied, then theory can be developed for the wide variety of settings in which debate is a vital tool in decision making" (p. 105). While the notion of developing innovations in argumentation theory within the debate round itself is not an argument I will deny, I believe that this paper has indicated this is not the only option we have.

To reverse this trend in the scholarship and provide a defense of debate as a laboratory for not only the study but also production of argumentation theory, I have suggested that debate may in fact provide reasons for revising already established argumentation theories such as the one proposed by the pragma-dialectical approach. A reversal of the relationship between debate practice and argumentation theory has the potential to radically alter the course of debate scholarship. It provides a justification for revising argumentation theory based on

the experiments that debaters engage in as part of their competitive experience. If this is true, then continued support by academic institutions is warranted given that debate may be seen, through this inversion, as a laboratory for the study of argument rather than a contest in which theoretical advances in argumentation theory are merely practiced.

Far from debunking the theoretical insights of pragma-dialectical argumentation theory, this paper hopes to shed light on ways in which they might be revised. Specifically, this paper suggests that the notion of higher-order conditions as a pre-requisite for adequate resolution of differences is in the very least untenable. This not only suggests that pragma-dialectical theory should pay closer attention to the practices of debate, but also that debate can and in fact does challenge the normative principles of established argumentation theory. This insight has two primary implications for argumentation scholarship and debate practice. In terms of argumentation scholarship, it suggests that in line with Goodnight's (2004) notion of controversy, argumentation theories will need to deal more directly with the times in which communicative norms and principles are under attack (Olson and Goodnight, 1994). This new model for effective argument scholarship suggests that pragma-dialectical theory, while it could function in certain contexts, falls short of adequately addressing the larger concerns of a society enmeshed in the Goodnight (2004) notion of controversy and its attendant modes of oppositional argument.

In terms of debate practice, this paper suggests that the very notion of switch-sides policy-oriented debate may need to be revised. Van Eemeren and Houtlosser (2003) are quick to argue that discussants in a dispute should be able to question one another's substantive commitments but not the rules of the critical discussion itself. Similarly, switch-sides defenders have argued that debaters should debate on both sides of the resolution without ever taking into account the fact that oppositional argument itself involves switching-sides. No one who has defended oppositional modes of argument has claimed that debaters should merely agree with one another. The massive increase in defenses of the received view of debate suggests that the community has dealt with the advent of opposition by crafting methods for maintaining a certain sense of clash, the maintenance of two sides, in the realm of oppositional argument (Balthrop, 1983).**[viii]**

It is hoped that this paper has provided two distinct but related insights of some importance to both argumentation theory and debate practice. First, this paper has opened up the possibility that pragma-dialectical argumentation theory and

the practice of switch-sides policy-oriented debate are both up for further review and critical scrutiny. In addition, this paper has provided for a new research trajectory which helps to map out the layers of overlap and tension that exist between the laboratory of intercollegiate academic debate and the ongoing scholarly efforts to produce theories of argumentation with broader social impact.**[ix]** Finally, it is hoped that this paper has shown the potential problems with rules-based approaches to argumentation, how they might be revised, and the ways that the debate community and argumentation theory can productively inform one another.

NOTES

[i] I use the term "intercollegiate academic debate community" throughout this paper to refer to those individuals who attend debate tournaments hosted by the Cross Examination Debate Association and the National Debate Tournament, the two primary bodies governing policy debate in the United States.

[ii] The term "traditional" in this sentence is clumsy but makes the point that there is an ongoing and to some extent revised set of norms established for debate that should not be violated given their importance to the competitive and pedagogical goals of the community.

[iii] Good examples of the types of resolutions debated by NDT/CEDA debaters can be found at http://www.wfu.edu/organizations/NDT/HistoricalLists/topics.html. The 2005-6 national resolution wording was the following: The United States Federal government should substantially increase diplomatic and economic pressure on the People's Republic of China in one or more of the following areas: trade, human rights, weapons nonproliferation, Taiwan.

[iv] Topicality is an argument based on the assumption that to be engaged in fair debate, teams must accept the responsibility when they are affirmative of running arguments that defend a policy-based action that squares with the language of the resolution.

[v] Arguments such as the affirmative right to define the parameters of the debate round would fall under this category.

[vi] I admit to some equivocation concerning the use of the terms "norms" and "rules" throughout the paper. This is primarily due to the fact that there are no actual rules in the debate community; however, the term "rules" is sometimes used in contest rounds to reference agreed upon norms especially when a perceived violation occurs.

[vii] This is an argument that has been made with a great deal of success by debaters from the University of Louisville.

[viii] Topicality, a defense of the switch-sides model, policy-oriented research as critical to pedagogy, etc.

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ISSA Proceedings 2006 – Manoeuvring Strategically With Rhetorical Questions

1. *Introduction*

In this paper I investigate what role the stylistic device rhetorical question can play in arguers' attempts to reconcile their rhetorical with their dialectical aims by manoeuvring strategically when carrying out particular discussion moves that form part of the dialectical procedure for resolving a dispute. The research I shall report on here, forms part of a larger project in which insights from classical rhetoric, pragmatics and modern stylistics are used to explore the possibilities for strategic manoeuvring with specific presentational means.**[i]**

Authors who have paid attention to the role of rhetorical questions in argumentative contexts, such as Slot (1993: 7) and Ilie (1994: 148) ascribe two main functions to rhetorical questions: they are used as a means of putting forward standpoints and as a means of putting forward arguments. Another function of rhetorical questions is mentioned by van Eemeren, Houtlosser & Snoeck Henkemans (2005): according to these authors rhetorical questions can also be analysed as proposals for a common starting point in the opening stage of a discussion. In this paper, I will concentrate on two of the three abovementioned functions of rhetorical questions: proposing a common starting point and putting forward argumentation. I shall first give an analysis of the way rhetorical questions can fulfil these functions, and then establish what dialectical and rhetorical goals might be served by executing the moves in question by means of

a rhetorical question instead of by some other presentational means. Finally, I shall give an indication of how the types of strategic manoeuvring that rhetorical questions can be instrumental in may derail, and in which violations of the rules for critical discussion such derailed manoeuvrings may result.

2. *Rhetorical questions in the opening stage and argumentation stage*

According to the model for critical discussion, the argumentation stage of the discussion should be preceded by a dialogue in the opening stage by means of which the parties come to an agreement on which propositions they will regard as common starting points during the discussion. The dialectical profile that van Eemeren, Houtlosser and Snoeck Henkemans (2005: 112) have sketched for the opening stage, specifies which moves of the discussants may contribute to achieving the aim of establishing in advance what will be the common starting points for the discussion. According to the profile, the dialogue about the starting points starts with a proposal by one party to the other party to accept a certain proposition as a shared starting point. The other party can accept or refuse this proposal, or accept it only on condition that some other proposition will also be accepted as a starting point for the same discussion.

Van Eemeren, Houtlosser and Snoeck Henkemans point out that it is unlikely that in practice parties will execute the opening move of the starting point dialogue by means of a fully explicit proposal to accept some proposition. Arguers can, however, implicitly make such a proposal, and one way of doing this is to ask a rhetorical question (2005: 115). A rhetorical question is a stronger sign that the arguer is making a proposal to accept a starting point than an ordinary question about the other party's beliefs. This is so because with a rhetorical question the addresser indirectly makes it clear that a preparatory condition for a proposal has been fulfilled, namely that the addresser thinks that the other party will be prepared to accept the proposition that functions as the presupposed answer to the question. Also, by asking a rhetorical question, the arguer shows that he himself believes that the proposition he proposes to the other party is indeed acceptable, which means that the sincerity condition for a proposal has also been fulfilled. Let us look at an example:

(1) I don't see why Google's rent-a-book program would not work. Isn't it true that libraries do not have many of the popular titles even if they are bestsellers?

The only sign that the arguer is making a proposal is the form of the rhetorical question, but in fact the arguer is making an assertion in which he presents the

acceptance of the proposal as unproblematic.**[ii]** According to van Eemeren, Houtlosser and Snoeck Henkemans (2005: 121) this is the general pattern with rhetorical questions that are being used to make a proposal to accept something as a common starting point.
Similar analyses of the function of rhetorical questions are given by other authors. Ilie (1994), for instance, also describes rhetorical questions as attempts by arguers to arrive at the same commitments:
The *addresser's commitment to the implicit rhetorical answer* is indicated by his/her conviction that there is no other possible answer to the rhetorical question. The addresser's expectation is to induce the same commitment in the addressee. (217).

And Rohde (2006), believes that a shared commitment by the discourse participants is a condition for felicitous rhetorical questions:
To be felicitous, rhetorical questions require that discourse participants share a prior commitment to similar, obvious, and often extreme answers. As such, rhetorical questions are biased, yet at the same time uninformative. Their effect is to synchronize discourse participants' commitments, confirming their shared beliefs about the world (135).

As is the case in example (1), the proposal to accept a common starting point often serves at the same time as an argument in the argumentation stage. The arguer then takes it for granted that the opponent will accept the proposal, so that he can use it as support for his standpoint. Ilie gives the following description of the arguer's aims in using a rhetorical question:
The addresser's ultimate goal is to elicit the addressee's agreement with the message implied by the rhetorical question, i.e. the addressee's agreement with, and preferably, commitment to the implication of the rhetorical question. By pursuing the ultimate goal, the addresser of a rhetorical question intends to induce in the addressee the disposition and the willingness to act on this shared commitment (1994: 219).
Rhetorical questions can be seen as indirect speech acts because they violate two of the rules for communication when taken literally. First, the adresser already knows the answer, so the question is superfluous. Second, the question is insincere, since the addresser does not expect to get an answer from the addressee. According to Houtlosser (1995: 255-256) these violations of the Principle of Communication can be made good by assuming that by asking the

question addressers implicate that they want their addressees to accept the consequences of their commitment to what is indirectly asserted.**[iii]**

As we have seen, rhetorical questions that are used to propose starting points are somewhat like "offers you can't refuse": the arguer makes it seem as if the acceptance of the proposed starting point is taken for granted, since the proposition which the addressee is asked to accept in the opening stage is at the same time being used as an argument for the arguer's standpoint in the argumentation stage. In the argumentation stage, the rhetorical question thus serves as a means to urge the addressee to act on his commitment and recognize that the standpoint that is being defended by the argument the addressee supposedly accepts, should now also be accepted.

3. *Rhetorical questions and strategic manoeuvring*

Van Eemeren en Houtlosser have proposed to integrate a rhetorical component into the pragma-dialectical theoretical framework by starting from the assumption that arguers make use of the opportunities available in a certain dialectical situation to handle that situation in the way that is the most favourable to them (2002: 138). By manoeuvring strategically, arguers try both to uphold a reasonable discussion attitude and to further their own case (2002: 142).

Each of the stages of the model of critical discussion has a specific dialectial aim, and, because, according to van Eemeren and Houtlosser, "the parties involved want to realize this aim to their best advantage, they can be expected to make the strategic moves that serve their interest best" (2002: 138). In other words: each dialectical objective of a particular discussion stage has a rhetorical analogue.

In order to achieve both the dialectical and the rhetorical objectives that are associated with the different discussion stages, each party will aim to make the allowable moves that are specified in the dialectical profiles for every stage in such a way that these moves influence the result of the discussion as much as possible in its own favor. In van Eemeren and Houtlosser's view, strategic manoeuvering can take place in making an expedient choice from the options constituting the 'topical potential' associated with a particular discussion stage, in selecting a responsive adaptation to 'audience demand' and in exploiting the appropriate 'presentational devices' (2002: 139). It is the latter aspect of strategic manoeuvring that I shall concentrate on here.

The dialectical aim of the *opening* stage as a whole is to establish an unambiguous point of departure for the discussion (van Eemeren and Houtlosser 2002: 138). In order to achieve this, parties should come to an agreement on

which procedural and material starting points they will accept for the duration of the discussion. According to van Eemeren and Houtlosser, the rhetorical aim of each of the parties is to arrive at the point of departure that serves their own interest best: “Each party’s strategic manoeuvring will be aimed at establishing the most workable starting points and the most opportune allocation of the burden of proof” (2002: 138).
As far as the first move of the opening stage is concerned, making a proposal to the other party to accept a proposition as a starting point, the *dialectical* (sub)aim is to give the other party the opportunity to agree or not to agree with the proposal, so that both parties can have a say in the matter and so that it becomes clear in advance which starting points have already been accepted and are therefore no longer open for discussion. The *rhetorical* aim associated with this move is that the arguer tries to ensure as much as possible that his own proposal will be accepted by the other party.

In what way can the presentational device ‘rhetorical question’ be instrumental to achieving the dialectical and rhetorical aims associated with this particular move? By asking a rhetorical question, because it has the form of a question, it is clearer that the arguer is making a proposal than if the arguer were to have stated that a specific proposition is a common starting point or if he would have acted as if this were the case by using this proposition as an argument. The impression is at least given that the other party can still agree or disagree. In that respect using a rhetorical question to propose a starting point as in (b) seems to be halfway between (a), first asking the other party whether he agrees with a certain proposition and when this proves to be the case using it as an argument for the standpoint, and (c) using the proposition as an argument and thereby making it clear that it is to be regarded as a common starting point:
(a) P: Do you agree that X?
A: Yes, I do.
P: Then you should also agree with me that Y!
(b) Y, because isn’t it the case that X?
(c) Y, because X

Dialectically speaking, option (b) seems a more reasonable way of getting a starting point accepted than for instance option (c). Rhetorically speaking, the advantage of proposing a starting point by means of option (b) instead of option (a) is that by asking a rhetorical question the arguer makes it seem as if the

proposition he proposes to the other party has in fact already been accepted by the other party, so that it looks as if making the proposal to accept it is in fact superfluous.

The dialectical aim of the *argumentation* stage as a whole is to test the tenability of the standpoint or standpoints that have been put forward in the confrontation stage, starting from the point of departure established in the opening stage (van Eemeren and Houtlosser 2002: 139). The rhetorical aim of this stage is to make the strongest case and launch the most effective attack.

When the protagonist has put forward argumentation, and the antagonist attacks its propositional content, the protagonist can defend the argumentation by pointing out that the proposition in question forms part of the list of propositions accepted by both parties in the opening stage. The protagonist and antagonist must then check whether this is indeed the case, and if so, the antagonist is obliged to accept the propositional content of the protagonist's argumentation. This method of defense by the protagonist is called the Intersubjective Identification procedure in pragma-dialectics (van Eemeren and Grootendorst 2004: 146).

To make it clear that a proposition used in the argumentation is part of the shared starting points the protagonist can simply use this proposition in the argumentation without providing further defence for it. By doing so the protagonist implicitly makes it clear that he or she considers the proposition to be already accepted by the other party. However, by presenting the argument in the form of a rhetorical question, the protagonist refers in a more explicit way to the fact that he or she is of the opinion that the Intersubjective Identification procedure should produce a positive result: this presentation makes it clear that the proposition in question is presupposed to be already acceptable to that party. The protagonist thereby also indicates that the acceptability of the propositional content of the argument can no longer be at issue; an antagonist who wants to criticize the argument will now have to focus on the justificatory or refutatory potential of the argument. This way of proceeding could in principle further the dialectical testing procedure, since it makes it explicitly clear which procedures are supposed to have been carried out already, and therefore need not be repeated.

Rhetorically speaking, it is in protagonists' interest to see to it that their chances of obtaining a positive result of the testing procedure are optimal. The rhetorical question enables them to present their argument in such a way that it becomes clear that they expect their opponent to admit it already belonged to the agreed

upon starting points. Criticizing the propositional content of the argument, therefore, seems no longer an option.

4. *Derailments of strategic manoeuvring with rhetorical questions*

As the analysis I have just presented has made clear, rhetorical questions can function as proposals in the opening stage of a discussion. Presenting the proposal to accept a proposition as a common starting point by means of a rhetorical question makes it possible to formulate the proposal in such a way that it becomes more difficult for the other party not to accept it. This is because the rhetorical question makes it seem that the proposition the arguer wants to use in the argumentation is in fact already part of the opponent's commitments. If this manoeuvre is successful, the protagonist can subsequently use the proposition as an argument in defence of his or her standpoint with the advantage of having made it virtually impossible for the antagonist to attack the acceptability of the propositional content of the argument without seeming to contradict himself.

As I have explained, using the presentational device of a rhetorical question can be a useful means of realizing important dialectical and rhetorical objectives in both the opening stage and the argumentation stage of a discussion. This, however, is not to say that the types of strategic manoeuvring to which the rhetorical question may be instrumental will always be in accordance with the rules for critical discussion. The manoeuvres in question may, of course, also go wrong and result in violations of these rules. I would now like to look at some possible ways in which such derailments may occur.

Since proposing a proposition by means of a rhetorical question indirectly amounts to making an assertion in which the arguer presents the acceptance of the proposal as unproblematic, there is, of course, a real danger of this type of manoeuvre resulting in a violation of rule 6, the starting-point rule:

Discussants may not falsely present something as an accepted starting point or falsely deny that something is an accepted starting point (van Eemeren and Grootendorst 2004: 193).

According to van Eemeren and Grootendorst (1992: 151), in falsely promoting a proposition to the status of a common starting point, the protagonist tries to *evade the burden of proof*: He prevents the proposition from being questioned and thus avoids having to give a further defence. Whether or not this fallacy has been committed depends on whether or not the proposition in question is in fact acceptable to the opponent or not. Since in practice, the starting points of the

discussion are generally not listed explicitly in advance, it will not always be possible to establish with certainty whether or not the starting point rule is really being violated. But even in cases where it is clear that a proposition has indeed been accepted by the other party, it is still possible for a violation of the starting point rule to occur, as van Eemeren and Houtlosser (2002: 151-152) have made clear. They discuss the case of a rhetorical question being used in a *conciliatio*: a figure in which an arguer uses an argument of the opponent to support his own standpoint. If a rhetorical question is used to this end, there is the following danger of derailment:

The danger of derailment stems from the fact that the opponent may be assumed to agree with the *content* of the argument but may *not* be assumed to agree with the way in which the argument is used to support precisely the opposite standpoint. (van Eemeren and Houtlosser 2002: 151)

In the case of a *conciliatio*, it is clear that the propositional content of the argument should be acceptable to the opponent, since this opponent used the same argument earlier on in the same discussion, albeit in support of the opposite standpoint. That the argument should also be acceptable as a justification of the standpoint the arguer is defending by means of the *conciliatio* is not very plausible, however. According to van Eemeren and Houtlosser, the use of *conciliatio* can be seen as a derailment if it is the case that:

the proponent just presupposes that the adopted argument has an unquestioning justificatory potential for his standpoint and leaves the opponent no room to question this presupposition. If a conciliatio is in this way derailed, the proponent relies on a starting point that is not yet accepted by the opponent and commits the fallacy of begging the question. (2002: 151-152).

So even when a rhetorical question rightly presupposes that the propositional content is already part of the opponent's commitments, there is still the danger that the arguer by making use of the rhetorical question puts so much pressure on the opponent that there is no room for the opponent to raise critical questions concerning the justificatory potential of the argument. The rhetorical question in itself, as we have seen, is already an attempt to get the opponent to act on his commitment to the proposition proposed, that is to accept the consequences of this commitment, which means recognizing that the standpoint that is being defended should also be accepted. The pressure on the opponent can be augmented by adding expressions such as "well then" to make even more clear

that the opponent should now be prepared to draw the desired consequences. Example (2) seems to be a case of the arguer trying to force his opponent to accept the standpoint by making use of rhetorical questions:
(2) Do you tell the whole and complete truth to such a degree that the objective truth is told in minute detail every time you open your mouth? Well then, are you a liar?

In the example, the arguer is defending the (implicit) standpoint that the opponent does not have the right to accuse someone of lying if that person does not give a completely accurate account of something. The argumentation for this standpoint put forward in the form of rhetorical questions is: "you yourself are not capable of always telling the complete objective truth, while you would not consider yourself a liar." By using "well then" the arguer makes it explicitly clear that the opponent should either be prepared to call himself a liar (and it is presupposed that the opponent will not want to do that), or accept the arguer's standpoint. That the opponent may grant that he himself cannot always tell the complete truth, is of course no reason to assume that he should therefore also be willing to accept the standpoint.**[iv]**

5. *Conclusion*
Because of their twofold function as a question and an assertion, rhetorical questions can serve at the same time as proposals to accept a common starting point and as arguments the acceptability of whose propositional content is presupposed. It is this combination of token openness and actual shielding which allows for potentially effective manoeuvring in the opening and argumentation stages of a discussion. As we have seen, this type of manoeuvring may derail if the arguer ascribes unwarranted commitments to the opponent and tries to prevent this opponent from putting forward criticisms, either with respect to the propositional content or to the justificatory potential of the argument. These derailments may result in the arguer evading the burden of proof or begging the question.

NOTES
[i] See for an earlier publication within this project Snoeck Henkemans 2005.
[ii] Rhetorical questions are often introduced by means of the expression 'after all'. According to Sadock 1971, "after all" can even be used as a test for whether a question is rhetorical or not: it can occur with rhetorical yes-no questions but not with ordinary yes-no questions.'After all' is an expression which, according to

Elizabeth Closs Traugott's analyis may be used as an "as we know" connective, by means of which "appeal is made to obvious, inter-personally recoverable, largely societal norms". (1997: 3).

[iii] If the rhetorical question functions as a standpoint, it is the addresser's aim to get it accepted. If it functions as an argument, the addresser attempts to get the addressee to accept the consequences of his commitment to the propositional content of the argument, that is, to accept the standpoint (Houtlosser 1995: 256).

[iv] Experimental research has provided evidence for the fact that rhetorical questions may be particularly effective in increasing persuasion and putting pressure on the opponent to accept a standpoint. According to Blankenship & Craig's (2006) results, a message containing rhetorical questions increased participants'attitudinal resistance to an attacking message more than a control message.

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ISSA Proceedings 2006 – Informal Fallacies As Inferences To The Best Explanation

All who teach logic are familiar with informal fallacies such as *ad ignorantium* (appeal to ignorance) and *ad populum* (appeal to popularity). While it is easy to give clear examples of poor reasoning of this sort, instructors are also cognizant of what might be called "exceptions": when it is legitimate to appeal to popularity or to an absence of evidence. Specifying the differences between fallacious and legitimate reasoning in these cases is not obvious. The view I defend here is that appeals to popularity and ignorance (and some other fallacies) should best be viewed as instances of abductive reasoning, or inferences to the best explanation. Thus, determinations of whether these types of arguments are good ones will rest on the criteria that determine good reasoning for abductive arguments generally**[i]**.

As such, determination of whether instances of *ad populum* and *ad ignorantium* are indeed fallacious will be decidedly informal.

1. *Ad Ignorantium*

To begin, let's look at ad ignorantium in more detail. It is fairly standard to characterize appeals to ignorance as inferring from a lack of evidence for a claim, that the claim is false (or conversely, inferring from a lack of evidence for the negation of a claim that the claim is true). It is not difficult to find examples of such fallacious inferences. Instructors discussing God's existence will find this student argument familiar:

1. There is no evidence that God exists.

Therefore, God doesn't exist.

That such arguments are fallacious is fairly straightforward. However, this is not the end of the matter for appeals to ignorance, for it is also not difficult to find examples of appeals to ignorance which seem reasonable; so reasonable, in fact, that it would be irrational for a person *not* to form beliefs on the basis of the lack of evidence. For instance, it is completely reasonable for me to form the belief that there is no tiger in the room, when my sole reason for having this belief is that there is no evidence of a tiger in the room. Merely remaining agnostic as to the existence of a tiger in the room (were the question posed) would be evidence of a defect of reason. To make things a bit more relevant, this argument seems at least reasonable.

1. Since the time of the coalition invasion of Iraq in the spring of 2003, no evidence of weapons of mass destruction has been found.

Therefore, at the time of the coalition invasion of Iraq in the spring of 2003, there were no significant weapons of mass destruction in Iraq.

How, then, to account for this apparent difference between legitimate and illegitimate appeals to ignorance? Oddly, many textbooks say nothing at all on the matter. Those that do ground the difference in one of two ways: they claim either that there are contextually-dependent pragmatic considerations that can justify appeals to ignorance, or that some appeals to ignorance have suppressed premises that, if made explicit, make it clear that the inferences are justifiable.

Concerning the first explanation, it is claimed that there are some cases such that the consequences of failing to believe truly (or believing falsely) are so dire that a lack of evidence can justify forming the belief (or at least acting as though one

had the belief). Taking an example from Douglas Walton's book, *Informal Logic,* not having evidence that a gun is not loaded is reason to presume that it is loaded, given the possible negative consequences of being mistaken as to its not being loaded. Similarly, in legal proceedings, it might be reasonable to presume innocence from a lack of evidence of guilt, given the moral cost of restricting the rights of innocent people.

Concerning the second explanation, it is claimed that some instances of what look like ad ignorantium are really enthymemes with hidden premises concerning expectations of evidence. Taking an example from Fogelin and Sinnott-Armstrong's *Understanding Arguments*, the inference to the claim that my wife doesn't keep a Winnebago in our garage, from the claim that I've never seen one there is good reasoning. This is so because, if my wife did keep a Winnebago in our garage, then I would see it there. Thus, arguments of this sort are really disguised instances of *modus tollens*:
1. If my wife kept a Winnebago in our garage, I would have seen one there.
2. I've never seen a Winnebago there.
Therefore, my wife doesn't keep a Winnebago in our garage.

This seems a plausible explanation of what's going on in the "Iraq" example above. If Iraq had weapons of mass destruction, we'd have expected to have found them by now. We haven't, so there aren't (or weren't) any.

Is either of these accounts a good explanation of the seeming difference between good and bad instances of appeal to ignorance? I don't think they are. Concerning the "enthymeme" explanation, there are a couple of worries. First, I think claims that arguments enthymemes should be approached with caution, because such claims presuppose a lot about the person giving the argument; probably too much. I'm reticent to even bring the concept up in my logic classes, because once students are introduced to the idea, they see every bad argument as an enthymatic good argument. More troublingly, if we take the enthymeme route, we could implausibly apply it for *all* instances of apparent ad ignorantium? We might claim that, in the "God" argument above, there is a hidden premise to the point that, if God did exist, we'd have found evidence for this by now. We haven't, so God doesn't exist. We can take this route with any apparent instance of ad ignorantium, which would yield the result that appeals to ignorance aren't errors in reasoning at all. Rather, the strength of the arguments in question will reduce to the reasonableness in accepting the premises; particularly those concerning

the expectation of evidence**[ii]**. If however, one wishes to maintain that the enthymatic cases are only *apparent* cases of ad ignorantium, how then are we to distinguish, non-arbitrarily, between genuine and apparent instances of ad ignorantium?

The claim that "good" appeals to ignorance depend on contextually-dependent pragmatic conditions is similarly unsatisfactory. If this view were correct, what should we say about whether or not to form the belief that there is no tiger in the room? If I am mistaken, there would indeed be negative consequences. Surely, this isn't sufficient reason to believe there is a tiger in the room (or to act as though there were).

2. *Ad Populum*

So, appealing to pragmatic concerns or enthymemes isn't going to help resolve the difficulty in distinguishing justifiable and unjustifiable instances of appeal to ignorance. Sadly, the problem is not limited to *ad ignorantium*, as it also seems to apply to *ad populum*.

While there are several ways to characterize ad populum fallacies, when I speak of them here I mean those inferences of the form, roughly:

1. It is generally believed that *p.*

Therefore, it is true that *p*.

As with ad ignorantium, there are instances where such appeals to popular belief are justified. In fact, there are so many such instances, I'm inclined to think that the majority of ad populum arguments are reasonable. Consider how many of your own beliefs you possess primarily or exclusively because they are widely accepted; in most cases making no attempt to ascertain expertise of those asserting the claims (say, concerning the capitals of various countries, the location of a neighborhood bar, etc). And of course, a great many of these beliefs, probably a significant majority, are true. That said, there are obviously bad inferences of this form. For instance,

1. Most people believe that some supernatural being exists.

Therefore, some supernatural being exists.

It seems clear that the mere common-ness of the belief is not sufficient to justify it. So again, how do we distinguish between justifiable and unjustifiable appeals to popularity?

It should be clear that the tact taken concerning instances of ad ignorantium will fail concerning ad populum as well. Walton, again, suggests that pragmatic concerns will weigh heavily here. If a decision must be made, appealing to popular belief provide "weak, but sometimes reasonable" arguments**[iii]**. That the standards of evidence justifying belief formation will vary from case to case is a truism. But still, many of the beliefs we have, that are completely reasonable, are not forced upon us by circumstances. I believe that the earth travels around the sun (roughly), and my reason for believing this is just that it is widely accepted. But, there are no significant negative consequences of remaining agnostic about this.

3. *Inference to the Best Explanation*

The problem in both of these cases results, I think, from a mischaracterization of the type of argumentation involved. Invariably, when textbook-authors point out the fallacious nature of these inferences, they rightly state that the conclusions "do not follow from the premises", that "lack of evidence does not *prove* non-existence", etc. And what they mean here (or seem to mean) is that the conclusions do not follow *deductively* from the premises. In other words, they are claiming that such arguments aren't valid. This is entirely correct, and it would be the end of the matter if deductively valid arguments were the only reasonable arguments. But of course they aren't. There are also inductive and abductive arguments; arguments which do not have deductive validity as a good-making feature. The reason, then, for the difficulty in separating fallacious and non-fallacious instances of the above-mentioned forms of reasoning is that these forms have been misconstrued as kinds of deductive reasoning when they should have been construed as instances of abductive reasoning. They are inferences to the best explanation.

While it is certainly true that it does not follow from a lack of evidence that *p*, that it is false that *p*, there will be many cases where the best explanation for the lack of evidence for p is that it is false that *p*. Of course, in such cases there will always be competing explanations for the lack of evidence, but they won't be reasonable explanations, and can thus be dismissed. What is the best explanation for the fact that there is no evidence of a tiger in the room? It is, of course, that there is no tiger in the room. The possibility that there is an invisible, silent tiger in the room can be ignored.

It should be clear that many, perhaps even most, instances of ad ignorantium, so interpreted, will still turn out to be cases of flawed reasoning. Students who claim

that God doesn't exist, because they have yet to find evidence of God's existence, reason poorly, because there are reasonable competing explanations for their lack of evidence: principally that they haven't considered many, if any, of the extant arguments for God's existence.

There will also be cases where it is not easy to determine whether or not the lack of evidence for a proposition is best explained by is falsehood. Concerning purported Iraqi weapons of mass destruction, critics of the Bush administration and the CIA will argue that the best explanation for not having found such weapons is that they never existed. Some apologists for the administration claim that there are competing explanations: namely that the weapons were smuggled off to Syria or some other neighboring country or that they were destroyed after the war began. In determining the best explanation in such cases, other factors will weigh in favor of one explanation over another (the feasibility of moving such weapons without detection, the likelihood of other nations willing to risk incurring the wrath of the West, etc.).

Viewing ad ignorantium as a case of inference to the best explanation suggests that labeling it a fallacy brushes with too broad a stroke. Rather, there will be a sliding scale of better or worse inferences, depending on the particular circumstance; as is true of abductive inference generally. In this respect, Walton is correct when he asserts that contextual factors will determine the justifiability of appeals to ignorance.

4. *Other Fallacies as Abductive Inferences*

Treating ad ignorantium as a case of abductive reasoning seems to work well enough, but what of other informal fallacies? Something similar can be said, I think, of ad populum inferences. While it is certainly true that it does not follow deductively from the fact that a proposition *p* is widely believed that *p* is true, it seems rather more reasonable to infer that the best explanation for the fact that *p* is widely believed is that it is, in fact, true. The supposition here is that, if a large number of people believe that *p*, then it is reasonable to suppose that some in the group would be in a position to determine definitively the truth of *p*, and there would be no reason for this information not to be disseminated throughout the population, etc.**[iv]** This is why we trust the judgment of the populace at large on such a wide range of issues.

However, there will be other cases such that there will be competing explanations for the wide acceptance of a claim. Say, concerning the widely-held belief in God or god-like beings, it might well be reasonable to suppose that belief in a supreme

being gives comfort to the believers, or that human beings have a tendency to appeal to the supernatural as explanations for phenomena that are properly explained naturalistically. Or concerning widely held moral beliefs, one might suppose that the explanation for the fact that people hold such beliefs is that people are guided by their emotions on such matters. Thus they are not trustworthy as a guide to moral truths, whereas they might well be concerning, say, which is the best hotel to stay in while in Amsterdam. As with ad ignorantium, instances of ad populum should not be viewed as cases of faulty reasoning, full-stop. Rather, there will be a sliding scale of better or worse inferences of this sort, depending on the quality of explanations involved.

What of other inference types? I'm less convinced of viewing other fallacies as inferences to the best explanation, but I think a case can be made for some. Concerning *ad vericundiam*, or appeal to inappropriate authority, I think it not implausible to suppose that what goes on in such cases is poor abductive reasoning. Consider a case where a television viewer accepts the claims of an endorser for the medical benefits of an herbal supplement:
1. The guy in the lab coat on TV asserts that *p.*
Therefore, he believes and has good evidence that *p*.

and

1. He believes and has good evidence that *p*.
Therefore, it is true that *p*.

The idea being that the best explanation for someone's asserting a proposition is that they are in a position to know of the truth of the proposition and also that they assert what they believe is true. (Surely, no one would assert a proposition unless they have good reason to believe it, right?) And further, the best explanation for that person's having good evidence that *p*, is that *p* is true. There are two ways, then, for such reasoning to go wrong. There might be a competing explanation for why someone asserts that *p*, other than that they believe it. If one discovers that someone may benefit by asserting a falsehood, this provides a reasonable alternative explanation for why they assert the claim in question. So, even if one is an expert (and thus in a position to know), we ought not to accept the claim where there is apparent bias, because this bias is a reasonable explanation of their assertion. Of course, the other way such reasoning can go wrong is if the person is not in a position to know, and there are lots of

alternatives here. People assert things because they believe falsely that they are experts, or to impress people with their body of "knowledge", or because they are merely paid endorsers, and so on.

What of the *post hoc ergo propter hoc*, or false cause, fallacy? Such inferences seem reasonably construed as inferences to the best explanation. They amount to the argument such that the best explanation for *b* following a is that *a* is the cause of *b*. Clearly, there are fallacious such inferences, and when they are fallacious, it is because there are competing, reasonable alternative explanations for why a follows *b*. There might be a common cause for both. The correlation is perhaps merely coincidental, and so on. However, as these alternative explanations appear more and more unlikely (say, as there is a lack of evidence of a third factor or the correlation is a strong one), the initial inference is better. It is a better explanation of the correlation than the alternatives.

Similarly with the fallacy of division. It is clearly faulty reasoning to conclude that because a thing has certain properties, its parts have those properties. It is faulty reasoning, that is, *if the inference is construed as deductive.* If it is construed abductively, then it is not so clear. There will be some cases where the best explanation for the properties of *a* is that the constituents of *a* also have these properties. The best explanation for the fact that Brazil has a great soccer team is that they have great players. We know this is a good explanation, because we have good evidence that the quality of the players affects the quality of the team. The best explanation for the fact that the U.S. Congress is incompetent is that its members are incompetent. There are, of course, cases of great teams without great players (though these seem to be in the minority), and there are incompetent bodies with competent members. What this shows, then, is that there are often competing explanations for the properties of wholes, other than there being those properties in the parts.

5. *Concluding Remarks*

So, again I think it not implausible to characterize at least some informal fallacies as inferences to the best explanation. The benefit of this characterization is that it admits of degrees of the worth of the inferences, even to the point where some of these "fallacious" inferences are in fact justifiable; and it does so while treating the good and bad versions as inferences of the same type (as opposed to arbitrarily treating some as enthymatic and some as not). Abductive reasoning is ampliative, meaning that further evidence will raise or lower the quality of the explanations. Such inferences are thus defeasible. Merely pointing out that "the

popular view might be wrong" in response to an appeal to popularity should not settle the matter. One can admit this, and yet still hold to the view that popularity is warrant-conferring. Whether something like an appeal to popularity or ignorance is sufficient grounds to accept the conclusion will depend on the reasonableness of competing explanations. Again, in this respect, Walton is correct in concluding that the reasonableness of these inferences is context dependent.

However, I've said nothing so far concerning the particulars of how, exactly, to so distinguish between good and bad inferences of these types. What is it that makes certain explanations good ones, to the point of recommending acceptance? All I've done to this point is provide what I think are intuitively plausible cases of good explanations. Sadly, I've little more to say on the matter here. There has been much written on abduction in the last 50 years, and yet no consensus has been reached. Some characterize the best explanation as the most probable explanation. Others prefer to focus on the aesthetic properties of explanation: simplicity, for instance. (There may of course be a connection between the two, as simpler theories will be more probable.) Peter Lipton prefers to speak of the best explanation as the "loveliest". But each of these has their critics and reasonably so. Some, like Bas Van-Frasssen, have claimed that inferences to the best explanation do not track the truth, as the best explanation will only be the best of what we've got. Perhaps we're just poor at thinking of alternative explanations, in which case our best explanation will simply be the best of a bad lot.

The fact that it has proven so difficult to give an adequate account of "good explanation" at least serves to highlight the non-formal nature of this inference type. It would be appropriate, then, if inference to the best explanation were essential in understanding arguments types in informal logic.

NOTES

[i] For the purposes of this paper, I assume a) that there is a type of reasoning such as inference to the best explanation that is distinct from other types of reasoning, and b) that at least some instances of inference to the best explanation count as good reasoning.

[ii] Here, I am assuming that errors in reasoning reside in the inference from premises to conclusion. This is not universally accepted, and is reasonably challenged by fallacies such as begging the question and false dichotomy. This dispute must wait for another time.

[iii] I confess, I think the idea of an argument's being 'weak' loses its meaning if

such arguments can still be reasonable. To admit that popular opinion can lead to reasonable arguments is to admit that it carries some evidential value; enough even, to justify belief. And what is logic for, if not to aid in belief revision?
[iv] It is important to note that I am not here suggesting that there are suppressed premises with this content.

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ISSA Proceedings 2006 – Citizenship Education And The Teaching Of Argumentation In Schools

The concept of citizenship is one which is currently being scrutinized, debated and revised nationally and internationally. An apparent disengagement from civic society and a breakdown in the sense that we share certain unifying values have contributed to a crisis of legitimacy in governments. Along with these general trends, the two factors of globalisation and immigration have led us to ask questions about the nature of citizenship. Maria van der Hoeven, the Dutch Minister for Education, in a speech given during the Dutch presidency of the European Union in 2004 stated that the lack of a sense of citizenship among people is the 'largest social problem we are facing'. She went on to argue that the fast pace of change – social and technological – has outstripped the family's

ability to educate citizens, requiring 'additional efforts on the part of society… to define and further social cohesion' (Hoeven, 2004). These thoughts are echoed in many countries by people right across the political spectrum. As a result of these trends and ideas, citizenship education has, in the last decade, become one of the most researched, debated and legislated areas in education.

There are a number of different approaches being taken to citizenship education. These differences can be characterised in various ways. David Kerr's international comparison focused on the degree to which national values are expressed and prescribed was used to distinguish between different educational policies (Kerr, 1999, p. 5). In a report for the European Commission, published last year, a three-way distinction was made between different schools of thought on civil society: as associational life (Putnam), as the good society (Keane) and as the public sphere (Habermas). Maria van der Hoeven's statement reflects one dominant approach in giving to citizenship education the task of defining and furthering social cohesion. She cites the American Pragmatist, Robert Putnam, in justifying the construct of citizenship with which her government was working. This construct is based on the notion of social capital – bonding and bridging – the development of identity in relation to one's immediate community and in relation to other communities. I wish to argue that an alternative conception of citizenship in terms of human well-being elevates the status of argumentation skills, as a fundamental aspect of citizenship, to a constituent part of well-being, rather than a strategic instrument or civic competency by means of which we may achieve social cohesion.

The theoretical basis of this preference draws on the Capability Approach as developed by Martha Nussbaum and Amartya Sen (see, for example, Sen, 1985; Nussbaum & Sen, 1993). This approach addresses the need for a normative account of human well-being for the formation and assessment of national and international policies. Rejecting the relativism of neo-liberalism and drawing on a modified Aristotelian essentialism, the capability approach asserts that there are features of humanness lying beneath local traditions and differences and the identification of these features is achieved by participatory dialogue. The recognition of these 'parts of the story', as Nussbaum calls them, gives us the starting off point for thinking about and planning for human well-being. Nussbaum lists ten of these features which map on to human freedoms or capabilities. The one feature which is architectonic -that is, it gives distinctively human structure to the other parts of the story – is what Nussbaum calls 'affiliation' which corresponds to Aristotle's category of *association and living*

together and fellowship of words and actions (Nussbaum, 1993, p. 246). The ability to argue well, taken in the broadest way this may be understood, is a specific human capability which realises affiliation.

I have said that within the various discussions on education for citizenship there are significantly different conceptions of purpose. The exposure of these conceptions in terms I outline above is important because in one view the teaching of argumentation is instrumental – and so limited in its scope. In another view – the teaching of argumentation is connected to an understanding of human well-being – and so not limited in its scope to the achievement of an extrinsic end, the details of which are set by industry or a particular political system or government. I advocate the explicit teaching of argumentation in the curriculum and that a conception of citizenship which is based upon ideas of human well being first and foremost is most conducive to the success of learning to argue well.

Evidence that the teaching of argumentation is recognised as an intrinsic part of citizenship education is already present in current discussions and policy. Alongside the requirement that we build social cohesion and foster civic participation there is a strand of thought which often is described in terms of skills and dispositions. The model of citizenship education as the induction of children into associational life is clearly present in Scottish discussion but there is also a thick strand within this discussion of citizenship as entailing an ongoing democratic participation and debate and the skills and dispositions which are necessary for this.

In the discussion document, Education for Citizenship in Scotland there is the following general statement which defines the scope of education for citizenship:

Education for citizenship should aim to develop capability for thoughtful and responsible participation in political, economic, social and cultural life. This capability is rooted in *knowledge and understanding*, in a range of *generic skills and competences*, including 'core skills', and in a variety of personal *qualities and dispositions*. [italics added] (LTS, 2002, para. 2.2)

I wish to focus attention on the phrase 'generic skills and competencies'. In the same document these are detailed as follows:

Examples of learning outcomes related to skills and competencies for citizenship

As a result of their learning experiences, young people should become progressively more able to:

– work independently and in collaboration with others to complete tasks requiring individual or group effort as appropriate
– locate, handle, use and communicate information and ideas, using ICT as appropriate
– *question and respond constructively to the ideas and actions of others in debate and/or in writing*
– *contribute to discussions and debate in ways that are assertive and, at the same time, attentive to and respectful of others' contributions*
– make informed decisions in relation to political, community and environmental issues
– persevere, where appropriate, in the face of setbacks and practical difficulties
– *negotiate, compromise, or assist others to understand and respect difference, when conflict occurs, recognising the difference between consensus and compliance.* [italics added] (LTS, 2002, p. 13)

It can be seen in the third, forth and last items that what is being described as a part of the necessary skills and dispositions for citizenship amount to a description of the elements of good argumentation.

Given this apparent official sanction for the teaching of argumentation, what is happening in schools now? Prior to, and latterly parallel to, all these developments and discussions there has been a movement for the teaching of philosophy in schools which has been quietly gaining ground. Matthew Lipman's work on Philosophy for Children in the US from 1970 on has been perhaps the most influential in this area. Drawing on a dialogical understanding of the process of education, which has its provenance in the work of Peirce, Dewey and Vygotski, Philosophy for Children centres on the idea of shared enquiry. The paradigm of education that he proposes is a community of inquiry whose regulative ideas are reasonableness (in personal character) and democracy (in social character). This is in contrast to a number of other apparently similar ideas which go under the name of critical thinking or thinking skills. It could be misleading to assume an absolute a distinction here but, generally speaking, whereas Philosophy for Children is philosophical and values explicit, the teaching of thinking skills or critical thinking in a schools context has its provenance in psychology and neurology and so tends to have a 'values-thin' approach, concentrating instead on the aims of the mastery, retention, durability and transfer of knowledge and skills. For Lipman, and those who have been influenced by him, critical thinking or the

teaching of thinking skills is more about precision whereas Philosophy for Children has an ethical import as children grapple with the creative and caring thinking which is entailed by a community of inquiry.

In Scotland, and, from what I can ascertain, in many countries there is a minority interest in the teaching of philosophy in schools and the people concerned are aware of the links to citizenship education. This brings me finally to a rather crucial issue: Are teachers at present capable of doing what is being proposed? The answer is, I think, no. Most university teachers will, I think, be aware of the difficulties many students have with discursive writing and there is, in Scotland at least, a general trend to displace philosophy from its previously central position in universities (RLF, 2006). Lipman argues that although there is little dispute that children should be doing rather than learning philosophy, teachers need to study philosophy in order to facilitate this: 'Until teachers have learned philosophy *and can do it*, prospects of thinking in education will not be very bright' (Lipman, 2003, p. 68). If the likelihood of realising the possibilities of this fundamental aspect of citizenship education hinge on a philosophically educated workforce of teachers, then the prospects are dim indeed.
In line with general trends in universities, it seems that there is little specific work being done in the teaching of philosophy to teachers or in initial teacher education although most Bachelor programmes would include a course in the philosophy of education. Were we to do something about this, a return to informal logic, in particular the use of a pragmadialectical approach might be most fruitful. Why pragma-dialectics? It seems the candidate of choice for this purpose since, as a theoretical definition of critical discussion framed as a code of conduct aimed at resolving differences, it appears to be tailor made for an educational context (van Eemeren & Grootendorst, 1993, chapter 10). The code of conduct is easily stated and easily understood. Once understood by adults it could be easily adapted to be understood at any level, introduced gradually in response to issues which arise in discussion. The aim of the resolution of differences might additionally give satisfaction to the need for a measurable outcome from funding bodies – indeed it has been noted in government inspections of schools in England that the teaching of philosophy has coincided with an improvement in the children's ability to disagree with each other without fighting (see, for example, OFSTED, 2003).

An ability to critique other people's ideas is of the utmost importance for a society which is being challenged increasingly by the rise of new authoritarianism and

religious fundamentalism (Law, 2006). I started by indicating the impetus behind the currently high profile of citizenship education. There are indications of an emerging response to the perceived disengagement of young people from mainstream politics and society taking the form of a new authoritarianism, and disquiet is felt by some that citizenship education may end up as simply an instrument of social control. Raising children to be critical thinkers and competent arguers to my mind gives us the best alternative response. In view of the discouraging situation with regard to philosophy in universities and schools, it is of the greatest importance that this issue receives urgent attention from anyone involved in the education of teachers.

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